

No. 12550

United States
Court of Appeals

For the Ninth Circuit.

| | |
|-----------------------------------|-------------|
| COMMISSIONER OF INTERNAL REVENUE, | Petitioner, |
| vs. | |
| MAY CHANDLER GOODAN, et al., | Respondent. |
| COMMISSIONER OF INTERNAL REVENUE, | Petitioner, |
| vs. | |
| MARIAN OTIS CHANDLER, | Respondent. |
| COMMISSIONER OF INTERNAL REVENUE, | Petitioner, |
| vs. | |
| NORMAN CHANDLER, | Respondent. |
| COMMISSIONER OF INTERNAL REVENUE, | Petitioner, |
| vs. | |
| PHILIP CHANDLER, | Respondent. |
| COMMISSIONER OF INTERNAL REVENUE, | Petitioner, |
| vs. | |
| CONSTANCE CHANDLER CROWE, | Respondent. |
| COMMISSIONER OF INTERNAL REVENUE, | Petitioner, |
| vs. | |
| HELEN CHANDLER GARLAND, | Respondent. |
| COMMISSIONER OF INTERNAL REVENUE, | Petitioner, |
| vs. | |
| RUTH C. WILLIAMSON, | Respondent. |

Transcript of Record

Petitions to Review Decisions of The Tax Court
of the United States.

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Transcript of Record

Petitions to Review Decisions of The Tax Court
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner,

A. CALDER MACKAY, ESQ.

ARTHUR MCGREGOR, ESQ.

HOWARD W. REYNOLDS, ESQ.

ADAM Y. BENNION, ESQ.

WM. Y. BENNION, ESQ.

WM. GALBALLY, JR., ESQ.

For Respondent,

H. A. MELVILLE, ESQ.

B. H. NEBLETT, ESQ.

HAROLD D. THOMAS

E. C. CROUTER, ESQ.

Chandler, May Chandler Goodan, Constance Chandler (Constance Chandler Crowe), Ruth C. Williamson, Norman Chandler, Harrison G. O. Chandler, Helen C. Garland, and Philip Chandler are designated "present trustees."

(c) The petitioner, as a beneficiary, during the year 1938 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$8,597.49, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1938 was the sum of \$11,446.46, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$2,848.97. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(d) The petitioner, as a beneficiary, during the year 1939 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$8,389.89, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1939 was the sum of \$12,418.07, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4,028.18. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(e) The petitioner, as a beneficiary, during the year 1940 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$9,385.93, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1940 was the sum of \$13,413.67, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4,027.74. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(f) The petitioner, as a beneficiary, during the year 1941 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$10,527.69, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1941 was the sum of \$12,563.85, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$2,036.16. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(g) Respondent, under date of June 30, 1943, issued a notice of deficiency determining that said Trust No. 2 was an association taxable as a corporation. Under date of June 30, 1943, respondent is-

sued a notice of deficiency determining that Trust No. 1, wherein Harry Chandler, Norman Chandler, and Marian Otis Chandler are designated "present trustees" and petitioner and others are designated "beneficiaries," was an association taxable as a corporation. Petitioner is informed and believes and therefore alleges that the trustees of each of the aforementioned trusts have filed or will file a petition to The United States Tax Court for a redetermination of the deficiencies set forth in said notices, and that the actions of the respondent in determining said trusts to be associations taxable as corporations and in determining the deficiencies herein involved are inconsistent, erroneous, and illegal.

Wherefore, petitioner prays that The Tax Court of the United States hear this petition and redetermine the aforesaid deficiencies in accordance with the rights of the petitioner in the premises and grant any and all refunds that may be due as a result of such redetermination.

Dated September 24, 1943.

/s/ WILLIAM GALBALLY, JR.,
Counsel for Petitioner.

State of California

County of Los Angeles—ss.

May Chandler Goodan, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief and that those she believes to be true.

/s/ MAY CHANDLER GOODAN.

Subscribed and sworn to before me this 24th day of September, 1943.

[Seal] /s/ FLORENCE E. SCALLEN,
Notary Public.

My commission expires Feb. 27, 1946.

EXHIBIT "A"

Treasury Department Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

June 30, 1943

Los Angeles Div.

LA:IT:90D:PB

Mrs. May Chandler Goodan,
2440 North Vermont Avenue,
Los Angeles, California.

Madam:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1938 to 1941, inclusive, discloses a deficiency of \$26,802.62 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner,

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

PS:dd

Enclosures:

Statement

Form of waiver.

Statement

LA:IT:90D:PB

Mrs. May Chandler Goodan,
2440 North Vermont Avenue,
Los Angeles, California.

Tax Liability for the Taxable Years Ended
December 31, 1938, to 1941, Inclusive
Income Tax

| Year | Liability | Assessed | Deficiency |
|-------------|-------------|-------------|-------------|
| 1938..... | \$ 5,746.44 | \$ 4,797.77 | \$ 948.67 |
| 1939..... | 29,513.20 | 6,903.65 | 22,609.55 |
| 1940..... | 20,173.82 | 18,276.19 | 1,897.63 |
| 1941..... | 34,055.78 | 32,709.01 | 1,346.77 |
| Total | \$89,489.24 | \$62,686.62 | \$26,802.62 |

This determination of your income tax liability has been made upon the basis of information on file in this office.

If you do not acquiesce in all of the adjustments making up the deficiency indicated, but desire to stop the accumulation of interest on that part of the deficiency resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amount of the deficiency you desire to have assessed at once. The execution of the form for the agreed portion of the deficiency will not deprive you of your right to petition The Tax Court of the United States for a redetermination of the deficiency.

A copy of this letter and statement has been mailed to your representative, Mr. William Galbally, 510 South Spring Street, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to Net Income

Taxable Year Ended December 31, 1938

| | |
|---|-------------|
| Net income as disclosed by return | \$36,057.36 |
| Additional income and unallowable deductions: | |
| (a) Automobile expenses disallowed | \$ 500.00 |
| (b) Dividends received | 5.00 |
| (c) Interest received | 208.28 |
| (d) Trust income | 2,524.76 |
| (e) Depreciation disallowed | 400.00 |
| (f) Interest disallowed | 250.35 |
| (g) Taxes disallowed | 61.44 |
| | 3,949.83 |
| Total | \$40,007.19 |

Additional deduction:

(h) Ranch loss allowed 149.20

Net income adjusted \$39,857.99

Explanation of Adjustments

(a) The deduction of \$500.00 claimed in your return against salary income for automobile expenses is not allowable under the provisions of section 23(a) of the Revenue Act of 1938.

(b) The amount reported in your return as dividends received from Citizens National Trust and Savings Bank is understated \$5.00.

(c) You failed to report \$208.28 interest on savings account at Vermont and Hollywood Branch of Security-First National Bank.

(d) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount reported in your return | Amount determined taxable to you | Addition to income (reduction) |
|-----------------------------|-----------------------------------|-------------------------------------|--------------------------------------|
| "Chandler Trust No. 1"..... | \$17,951.66 | \$17,627.45 | \$(324.21) |
| "Chandler Trust No. 2"..... | 8,597.49 | 11,446.46 | 2,848.97 |
| Total | \$26,549.15 | \$29,073.91 | \$2,524.76 |

(e) The deduction of \$1,125.00 claimed in your return for depreciation on warehouse is \$400.00 in excess of the amount allowable under the provisions of section 23(l) of the Revenue Act of 1938.

(f) The deduction claimed for interest is overstated \$250.35.

(g) The deduction claimed for taxes is overstated \$61.44.

(h) A deduction is allowed for your community half of \$298.40 ranch loss, not claimed in your return.

Computation of Tax

Taxable Year Ended December 31, 1938

| | |
|--|----------------------|
| Net Income Adjusted | \$39,857.99 |
| Less: Personal exemption | \$2,500.00 |
| Credit for dependents | 800.00 3,300.00 |
| Balance (surtax net income) | \$36,557.99 |
| Less: Earned income credit | 1,264.00 |
| Net income subject to normal tax | \$35,293.99 |

| | |
|---------------------------------------|-------------|
| Normal tax at 4% on \$35,293.99 | \$1,411.76 |
| Surtax on \$36,557.99 | 4,337.18 |
| Total income tax | \$ 5,748.94 |
| Less: Income tax paid at source | 2.50 |
| Correct income tax liability | \$ 5,746.44 |
| Income tax assessed: | |
| Original, account No. 204921 | 4,797.77 |
| Deficiency of income tax | \$ 948.67 |

Adjustments to Net Income

Taxable Year Ended December 31, 1939

| | |
|---|-------------|
| Net income as disclosed by return | \$44,140.69 |
| Additional income and unallowable deductions: | |
| (a) Compensation for services | \$ 2,547.19 |
| (b) Interest received | 45,863.20 |
| (c) Trust income | 3,686.74 |
| (d) Depreciation disallowed | 25.37 |
| (e) Interest disallowed | 240.57 |
| (f) Taxes disallowed | 147.23 |
| Total | \$96,650.99 |
| Additional deduction: | |
| (g) Ranch loss | 860.82 |
| Net income adjusted | \$95,790.17 |

Explanation of Adjustments

(a) You failed to report your community half of \$5,094.38 fees received by your husband as Administrator of Estate of Frances Chandler Kirkpatrick, Deceased.

(b) This represents \$45,667.76 interest constructively received on "Vermejo Club" note and \$195.44 interest received on savings account, not reported in your return.

(c) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount reported in your return | Amount determined taxable to you | Addition to income (reduction) |
|------------------------------|-----------------------------------|-------------------------------------|--------------------------------------|
| "Chandler Trust No. 1" | \$21,560.46 | \$21,219.02 | \$(341.44) |
| "Chandler Trust No. 2" | 8,389.89 | 12,418.07 | 4,028.18 |
| Total | \$29,950.35 | \$33,637.09 | \$3,686.74 |

(d) The deduction of \$750.37 claimed in your return for depreciation on warehouse is \$25.37 in excess of the amount allowable under the provisions of section 23(1) of the Internal Revenue Code.

(e) The deduction claimed for interest is overstated \$240.57.

(f) The deduction claimed for taxes is overstated \$147.23.

(g) A deduction is allowed for your community half of \$1,721.63 ranch loss, not claimed in your return.

Computation of Tax

Taxable Year Ended December 31, 1939

| | | |
|--|-------------|-------------|
| Net Income Adjusted | | \$95,790.17 |
| Less: Personal exemption | \$ 2,500.00 | |
| Credit for dependents | 800.00 | 3,300.00 |
| | | <hr/> |
| Balance (surtax net income) | | \$92,490.17 |
| Less: Earned income credit | | 1,400.00 |
| | | <hr/> |
| Net income subject to normal tax | | \$91,090.17 |
| Normal tax at 4% on \$91,090.17 | \$ 3,643.61 | |
| Surtax on \$92,490.17 | 25,869.59 | |
| | | <hr/> |
| Total income tax | | \$29,513.20 |
| Correct income tax liability | | \$29,513.20 |
| Income tax assessed: | | |
| Original, account No. 202525 | | 6,903.65 |
| | | <hr/> |
| Deficiency of income tax | | \$22,609.55 |

Adjustments to Net Income

Taxable Year Ended December 31, 1940

| | | |
|---|------------|-------------|
| Net income as disclosed by return | | \$58,812.10 |
| Additional income and unallowable deductions: | | |
| (a) Trust income | \$3,690.42 | |
| (b) Depreciation disallowed | 314.49 | |
| (c) Mathematical error | 50.00 | |
| (d) Contributions disallowed | 260.00 | |
| (e) Interest disallowed | 438.83 | |
| (f) Taxes disallowed | 671.63 | 5,425.37 |
| | | <hr/> |
| Total | | \$64,237.47 |
| Reductions in income: | | |
| (g) Interest received | \$ 403.72 | |
| (h) Ranch loss | 1,417.42 | 1,821.14 |
| | | <hr/> |
| Net income adjusted | | \$62,416.33 |

Explanation of Adjustments

(a) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|-----------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1"..... | \$23,314.74 | \$22,977.42 | \$(337.32) |
| "Chandler Trust No. 2"..... | 9,385.93 | 13,413.67 | 4,027.74 |
| Total | \$32,700.67 | \$36,391.09 | \$3,690.42 |

(b) The deduction of \$750.38 claimed in your return for depreciation on warehouse is \$25.88 in excess of the amount allowable under the provisions of section 23(1) of the Internal Revenue Code, and similarly the deduction of \$460.87 claimed for depreciation on property used in "Goodhue's" business is excessive in the amount of \$288.61.

(c) As a result of a mathematical error the net income reported in your return from the operation of "Glendale Furniture Co." and "Goodhue's" is understated \$50.00.

(d) The deduction claimed for contributions includes an amount of \$260.00 not allowable under the provisions of section 23(o) of the Internal Revenue Code.

(e) The deduction claimed for interest is overstated \$438.83.

(f) The deduction claimed for taxes is overstated \$671.63.

(g) The total of the interest on savings accounts added to income under adjustment (c) for 1938 and (b) for 1939 is here eliminated from income.

(h) A deduction is allowed for your community half of \$2,834.83 ranch loss, not claimed in your return.

Computation of Tax

Taxable Year Ended December 31, 1940

| | |
|--|-------------|
| Net Income Adjusted | \$62,416.33 |
| Less: Personal exemption | \$ 2,000.00 |
| Credit for dependents | 800.00 |
| Balance (surtax net income) | \$59,616.33 |
| Less: Earned income credit | 1,400.00 |
| Net income subject to normal tax | \$58,216.33 |
| Normal tax at 4% on \$58,216.33 | \$ 2,328.65 |
| Surtax on \$59,616.33 | 16,011.19 |

| | |
|--|-------------|
| Total normal tax and surtax | \$18,339.84 |
| Defense tax (10% of \$18,339.84) | 1,833.98 |
| <hr/> | |
| Total income tax | \$20,173.82 |
| Correct income tax liability | \$20,173.82 |
| Income tax assessed: | |
| Original, account No. 202505 | 18,276.19 |
| <hr/> | |
| Deficiency of income tax | \$ 1,897.63 |

Adjustments to Net Income

Taxable Year Ended December 31, 1941

| | |
|---|-------------|
| Net income as disclosed by return | \$64,349.14 |
| Additional income and unallowable deductions: | |
| (a) Depreciation disallowed | \$ 601.18 |
| (b) Long-term capital loss disallowed | 688.47 |
| (c) Trust income | 1,702.23 |
| (d) Interest disallowed | 180.93 |
| (e) Taxes disallowed | 168.57 |
| <hr/> | |
| Total | \$67,690.52 |
| Additional deduction: | |
| (f) Ranch loss | 898.72 |
| <hr/> | |
| Net income adjusted | \$66,791.80 |

Explanation of Adjustments

(a) The deduction of \$750.38 claimed in your return for depreciation on warehouse is \$25.38 in excess of the amount allowable under the provisions of section 23(1) of the Internal Revenue Code, and similarly the deduction of \$1,059.23 claimed for depreciation on property used in "Goodhue's" business is excessive in the amount of \$575.80.

(b) Your community half of long-term capital loss from the sale of 700 shares of Citizens National Trust and Savings Bank Stock has been determined as \$7,287.95, in lieu of \$7,976.42 claimed in your return.

(c) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$23,311.10 | \$22,977.17 | \$(333.93) |
| "Chandler Trust No. 2" | 10,527.69 | 12,563.85 | 2,036.16 |
| <hr/> | | <hr/> | |
| Total | \$33,838.79 | \$35,541.02 | \$1,702.23 |

(d) The deduction claimed for interest is overstated \$180.93.

(e) The deduction claimed for taxes is overstated \$168.57.

(f) A deduction of \$1,040.67 is allowed for your community half of ranch loss, in lieu of \$141.95 claimed in your return.

Computation of Alternative Tax

Taxable Year Ended December 31, 1941

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$66,791.80 |
| Plus: Net long-term capital loss | | 10,496.50 |
| Ordinary net income | | \$77,288.30 |
| Less: Personal exemption | \$ 1,500.00 | |
| Credit for dependents | 433.33 | 1,933.33 |
| Balance (surtax net income) | | \$75,354.97 |
| Less: Earned income credit | | 1,400.00 |
| Net income subject to normal tax | | \$73,954.97 |
| Normal tax at 4% on \$73,954.97..... | \$ 2,958.20 | |
| Surtax on \$75,354.97 | 34,246.53 | |
| Partial tax | | \$37,204.73 |
| Minus: 30% of net long-term capital loss | | 3,148.95 |
| Alternative tax | | \$34,055.78 |

Computation of Tax

Taxable Year Ended December 31, 1941

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$66,791.80 |
| Less: Personal exemption | \$ 1,500.00 | |
| Credit for dependents | 433.33 | 1,933.33 |
| Balance (surtax net income) | | \$64,858.47 |
| Less: Earned income credit | | 1,400.00 |
| Net income subject to normal tax | | \$63,458.47 |
| Normal tax at 4% on \$63,458.47..... | \$ 2,538.34 | |
| Surtax on \$64,858.47 | 27,946.50 | |
| Total | | \$30,484.84 |
| Alternative tax | | \$34,055.78 |
| Correct income tax liability | | \$34,055.78 |
| Income tax assessed: | | |
| Original, account No. 381075 | | 32,709.01 |
| Deficiency of income tax | | \$ 1,346.77 |

Received and filed Sept. 27, 1943, T.C.U.S.

(Title of Tax Court and Cause.)

Docket No. 3033.

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar years 1938 to 1941, inclusive, but denies that the total of the proposed deficiencies aggregating \$26,802.62 is in controversy; denies the remainder of the allegations contained in paragraph 3 of the petition.

4. (a) to (e), inclusive. Denies that the respondent erred as alleged in subparagraphs (a) to (e), inclusive, of paragraph 4 of the petition.

5. (a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraphs 5 of the petition.

(c). Admits that petitioner in her income tax return for 1938 reported \$8,597.49 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$11,446.46, and accordingly increased the taxable net income reported by petitioner by \$2,-

848.97. Denies that respondent's determination was erroneous and denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d). Admits that petitioner in her income tax return for 1939 reported \$8,389.89 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$12,418.07, and accordingly increased the taxable net income reported by petitioner by \$4,028.18. Denies that respondent's determination was erroneous and denies the remaining allegations contained in subparagraph (d) of paragraph 5 of the petition.

(e). Admits that petitioner in her income tax return for 1940 reported \$9,385.93 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$13,413.67, and accordingly increased the taxable net income reported by petitioner by \$4,027.74. Denies that respondent's determination was erroneous and denies the remaining allegations contained in subparagraph (e) of paragraph 5 of the petition.

(f). Admits that petitioner in her income tax return for 1941 reported \$10,527.69 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$12,563.85, and accordingly increased the taxable net income reported by petitioner by \$2,-

036.16. Denies that respondent's determination was erroneous and denies the remaining allegations contained in subparagraph (f) of paragraph 5 of the petition.

(g). Denies the allegations contained in subparagraph (g) of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

HAROLD D. THOMAS,
Special Attorney,
Bureau of Internal Revenue.

Received and filed Nov. 17, 1943. T. C. U. S.

[Title of Tax Court and Causes.]

Docket Nos. 3033, 3036, 3037, 3038, 3039, 3040, and 3041.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, as follows:

(1) Chandler Trust No. 2 was created on June 26, 1935, by the execution of a Trust Agreement, a photostat copy of which is attached hereto, marked "Exhibit 1-A" and made a part hereof. At no time since its execution has said Trust Agreement been altered, amended or modified.

(2) At the time said Trust Agreement was executed, one of the Trustors, Marian Otis Chandler, conveyed to the Present Trustees and their successors two certificates representing 16,536 shares of stock of Chandis Securities Company; and each of the other seven Trustors conveyed to the Present Trustees and their successors a certificate representing 50 shares of stock of The Times-Mirror Company and two certificates representing 2,694 shares of stock of Chandis Securities Company.

(3) Said certificates of stock were endorsed by the respective Trustors on June 27, 1935, and delivered to The Times-Mirror Company and Chandis Securities Company for cancellation, and a new certificate representing 350 shares was issued by The Times-Mirror Company and a new certificate

representing 35,394 shares was issued by Chandis Securities Company in the names of and delivered to the Trustees on June 27, 1935. From that date to the present time, said certificates have been kept by the Trustees.

(4) The total property owned by the trust during the taxable years consisted of (a) a small amount of principal cash (\$607.83 during 1938 and 1939, and \$7.83 during 1940 and 1941), (b) 350 shares of stock of The Times-Mirror Company, (c) 35,394 shares of common stock of Chandis (Securities Company), and (d) shares of preferred stock of Chandis (Securities Company) as follows: December 31, 1937, 884 shares; December 31, 1938, 1,591 shares; December 31, 1939, 2,304 shares; December 31, 1940, 3,011 shares; and December 31, 1941, 3,541 shares.

(5) The gross cash receipts and expenditures of the trust for each of the taxable years were as follows:

| Gross Cash Receipts | 1938 | 1939 | 1940 | 1941 |
|---|-------------|-------------|-------------|--------------|
| Dividends on Times-Mirror Co. stock..... | \$26,950.00 | \$32,375.00 | \$35,000.00 | \$35,000.00 |
| Dividends on Chandis Securities Co. stock | 62,918.30 | 54,343.81 | 62,501.23 | 77,692.39 |
| Total | \$89,868.30 | \$86,718.81 | \$97,501.23 | \$112,692.39 |
| Expenditures | | | | |
| Office Expense | \$ 303.40 | \$ 295.80 | \$ 299.86 | \$ 295.80 |
| California State Income Tax | 6,292.03 | 4,420.00 | 4,420.00 | 4,617.76 |
| Total | \$ 6,595.43 | \$ 4,715.80 | \$ 4,719.86 | \$ 4,913.56 |
| Net | \$83,272.87 | \$82,003.01 | \$92,781.37 | \$107,778.83 |

The office expenses set forth above represented compensation paid for part-time clerical services in keeping the trust's books and records.

(6) During the taxable years the trust received, as taxable stock dividends on its Chandis Securities Company common stock, the following number of shares of Chandis Securities Company preferred stock: 1938—707 shares; 1939—707 shares; 1940—707 shares; 1941—530 shares; which shares had a fair market value equal to their par value, or \$70,-700.00 for the shares received during each of the first three years and \$53,000.00 for the shares received during the year 1941. Attached hereto as "Exhibit 2-B" and "Exhibit 3-C," respectively, are a photostat copy of the minutes of the meeting of the Board of Directors of Chandis Securities Company held on December 6, 1937, and a copy of one of the letters, dated September 20, 1937, referred to therein.

(6a) Respondent does not admit or concede by anything contained in this stipulation that there was in fact a valid trust and no statement herein contained shall be construed to mean that a valid trust existed.

(7) The net cash income distributable and distributed under the terms of the Trust Agreement to the respective beneficiaries, reported by said beneficiaries in their respective Federal income tax returns and upon which they paid individual income taxes, was as follows:

| | 1938 | 1939 | 1940 | 1941 |
|-----------------------|-------------|-------------|-------------|--------------|
| Marian O. Chandler.. | \$26,442.77 | \$23,273.78 | \$27,079.86 | \$ 34,085.00 |
| May C. Goodan..... | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Ruth C. Williamson.. | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Helen C. Garland..... | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Harrison Chandler .. | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Philip Chandler | 8,118.57 | 8,389.89 | 9,385.93 | 10,527.69 |
| Norman Chandler | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Constance C. Crowe.. | 8,118.58 | 8,389.89 | 9,385.93 | 10,527.69 |
| Totals | \$83,272.87 | \$82,003.01 | \$92,781.37 | \$107,778.83 |

(8) During each of the taxable years the trust paid the following Federal income taxes with cash contributed therefor by the petitioners in accordance with their respective interests in the trust:

1938—\$27,220.00
 1939—\$17,942.00
 1940—\$17,942.00
 1941—\$26,404.00

Said income taxes were computed on the taxable stock dividends received by the trust during the preceding year.

(9) The following table shows the relationships and the ages at June 26, 1935, of the individuals named in Article IV of the Trust Agreement:

| Name | Relationship | Ages at 6/26/35 |
|-----------------------------|--------------|-----------------|
| Marian Otis Chandler | | 68 |
| May C. Goodan..... | Daughter | 42 |
| Constance Chandler | Daughter | 39 |
| Ruth C. Williamson..... | Daughter | 37 |
| Harrison G. O. Chandler.... | Son | 32 |
| Norman Chandler | Son | 35 |
| Helen C. Garland..... | Daughter | 28 |
| Philip Chandler | Son | 28 |

| Name | Relationship | Ages at 6/26/35 |
|---------------------------|--|-----------------|
| Harry C. Kirkpatrick..... | Son of Frances C. Kirkpatrick, deceased daughter of Marian Otis Chandler | 16 |
| Marian Kirkpatrick | Daughter of Frances C. Kirkpatrick, deceased daughter of Marian Otis Chandler | 12 |
| Ruth C. Goodan | Daughter of May C. Goodan | 18 |
| William Goodan | Son of May C. Goodan | 16 |
| Douglas Goodan | Son of May C. Goodan | 12 |
| Jean Goodan | Daughter of May C. Goodan | 8 |
| Camilla Chandler | Daugh. of Norman Chandler | 10 |
| Otis Chandler | Son of Norman Chandler | 7 |
| Warren B. Williamson | Son of Ruth C. Williamson | 6 |
| Chandler Williamson | Son of Ruth C. Williamson | 5 |
| Susan Williamson | Daugh. of Ruth C. Williamson | 5 |
| Norman B. Williamson | Son of Ruth C. Williamson | 3 |
| Gwendolyn Garland | Daugh. of Helen C. Garland | 2 mo. |

(10) All of said individuals are living at the present time except Chandler Williamson, who died in June, 1943.

(11) At a meeting held by the Trustees on June 26, 1935, Marian Otis Chandler was chosen Chairman and Constance C. Crowe was chosen Secretary of the trust, which positions they still occupy.

(12) The principal business of The Times-Mirror Company is and since 1881 has been the publication of "The Los Angeles Times," a newspaper with daily morning and Sunday editions. It has one class of stock, of which 5,760 shares were outstanding during the taxable years and for more than ten years prior to June 26, 1935. At all times since 1884 a majority of the stock of The Times-Mirror Company has been owned, directly or indirectly, by the father of Marian Otis Chandler, General

Harrison Gray Otis, and his descendants. Immediately prior to the creation of the trust on June 26, 1935, shares of stock of The Times-Mirror Company were owned as follows:

| Name of Stockholder | No. Shares |
|--|------------|
| Marian Otis Chandler | 1,634 |
| May C. Goodan | 50 |
| Ruth C. Williamson | 50 |
| Helen C. Garland | 50 |
| Harrison G. O. Chandler | 50 |
| Philip Chandler | 50 |
| Constance Chandler | 50 |
| Norman Chandler | 100 |
| Estate of Frances C. Kirkpatrick | 50 |
| Harry Chandler | 3 |
| Chandis Securities Company | 1,935 |
| Others | 1,738 |
| Total..... | 5,760 |

(13) Chandis Securities Company, which was a personal holding company during the years involved herein, was organized in 1916. On June 25, 1935, its outstanding stock consisted of 38,288 shares of common stock. Of these, Marian Otis Chandler owned 16,536 shares, her seven living children and the estate of her deceased daughter each owned 2,694 shares, and Harry Chandler owned 200 shares. Preferred stock of Chandis Securities Company was first authorized and issued in 1937, and on December 31, 1941, there were 5,954 shares of such preferred stock outstanding.

(14) In the event it is finally determined that the stock dividends are not taxable to the petitioners, the parties hereby stipulate and agree that there

are deficiencies or overpayments in Petitioners' income taxes for the taxable years as follows, and that the Court may enter its decisions accordingly (Note: parentheses represent overpayments):

| Taxpayers | 1938 | 1939 | 1940 | 1941 |
|-------------------------|-----------|-------------|-----------|-----------|
| May C. Goodan | \$ 317.48 | \$20,482.24 | (\$50.91) | \$ 240.32 |
| Marian Otis Chandler.. | 21,301.69 | 42.61 | 184.38 | 626.45 |
| Norman Chandler | 4,592.52 | 918.09 | 1,218.56 | 1,840.23 |
| Philip Chandler | (13.79) | 407.21 | 300.00 | 1,209.86 |
| Constance C. Crowe | 1,577.88 | 938.28 | 1,286.73 | 700.51 |
| Helen C. Garland | 133.03 | 59.22 | 582.38 | 16.20 |
| Ruth C. Williamson | 96.65 | 1,583.92 | (48.66) | 234.79 |

It is further stipulated and agreed, and the Court may find as part of its decisions, that the deficiencies in amounts above stated were paid by the respective petitioners to the Collector of Internal Revenue at Los Angeles, California, on December 31, 1946, with the following exceptions: in the case of May Chandler Goodan part payment of the deficiencies for the years 1938 and 1939 were made on June 30, 1944, in the amounts of \$236.42 and \$20,294.44, respectively, and the deficiency for 1941 has not been paid; in the case of Philip Chandler the deficiencies for the years 1939 to 1941 in the total amount of \$1,917.07 have been reduced by the overpayment for the year 1938 of \$13.79 and the net amount of \$1,903.28 was paid on December 31, 1946; and in the case of Ruth Chandler Williamson deficiencies for the years 1938, 1939 and 1941, less an overpayment for the year 1940, were paid on December 31, 1946, as follows:

| | |
|-----------------------|--------------------------|
| 1938 | \$ 96.65 |
| 1939 | 5,290.50 |
| 1941 | 234.79 |
| | <hr/> |
| | \$5,621.94 |
| 1940 | 48.66 |
| | <hr/> |
| Net amount paid | <u><u>\$5,573.28</u></u> |

It is further stipulated and agreed, and the Court may find as part of its decisions, that the overpayments above stated were made within three years before the mailing of the notices of deficiency or the filing of the petitions or the execution of consents under the provisions of section 276(b) of the Internal Revenue Code or the Revenue Act of 1938, and that the notices of deficiency were mailed, the petitions were filed, or the consents were executed within three years from the time the returns were filed. (Section 322(d) of the Internal Revenue Code and the Revenue Act of 1938, as amended by Section 169(b) of the Revenue Act of 1942 and Section 509 of the Revenue Act of 1943).

(15) It is further stipulated and agreed that in the event it is finally determined that said stock dividends are taxable to the petitioners, there are deficiencies in income tax, and the Court may enter its decisions, as follows:

| Taxpayers | 1938 | 1939 | 1940 | 1941 |
|--------------------------|------------|-------------|------------|------------|
| May C. Goodan | \$1,576.30 | \$23,616.73 | \$2,840.34 | \$2,870.16 |
| Marian O. Chandler | 41,554.13 | 13,165.50 | 19,354.75 | 15,314.93 |
| Norman Chandler | 6,698.41 | 3,307.41 | 4,340.27 | 4,551.00 |
| Philip Chandler | 1,180.61 | 1,657.10 | 2,665.96 | 3,596.95 |
| Constance C. Crowe | 2,942.21 | 2,398.13 | 3,726.33 | 3,006.68 |
| Helen C. Garland | 1,329.88 | 1,394.51 | 2,815.69 | 2,230.25 |
| Ruth C. Williamson | 1,635.51 | 3,188.12 | 2,613.58 | 2,864.63 |

The Court may also find that a portion of said deficiencies has been paid by the respective petitioners, in amounts set forth hereinabove.

(16) It is further stipulated and agreed that there is no penalty liability under Section 293(a) of the Revenue Act of 1938 for the taxable year 1938 in the case of petitioner Norman Chandler, Docket No. 3037.

Dated April 26, 1948.

/s/ CALDER MACKAY,

/s/ ARTHUR MCGREGOR,

/s/ HOWARD W. REYNOLDS,

/s/ ADAM Y. BENNION,

/s/ WILLIAM GALBALLY, JR.,

(Representing May Chandler Goodan), Counsel for
Petitioners.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Coun-
sel for Respondent.

Filed at hearing April 26, 1948. T. C. U. S.

(Title of Tax Court and Causes).

Docket Nos. 3033, 3036, 3037, 3038, 3039, 3040, 3041.

Promulgated May 23, 1949.

In 1935 eight individuals transferred individually-owned stock in two corporations in trust and directed the trustees to pay their pro rata share of trust income to themselves for life, then to their respective spouses, then to their issue, and then to their heirs until termination of the trust, at which time the trust corpus was to go to their issue, if any, and then to their heirs-at-law. The trust was to terminate upon the death of the survivor of 21 named individuals ranging in age from 68 years to two months and including the eight trustors. Each trustor reserved a power of appointment of his share of trust income and principal after his death. Cash net income was to be, and was, distributed to the life tenant-trustors during the taxable years and the income tax due thereon was paid by them. Taxable stock dividends received by the trust during each of the taxable years was reported as trust income and the income tax paid thereon. A provision of the trust agreement required stock dividends to inure to principal. Respondent determined that the taxable stock dividends constituted income to the life tenant-trustors for the reason that no valid trust was created, or sections 22(a), 166, or 167 of the Revenue Act of 1938 and the Internal Revenue Code applied. Held, the trust created herein was a valid trust under the laws of California, following

Bixby v. California Trust Co., 190 P. (2d) 521,
and Gray v. Union Trust Co. 154 P. 306.

Held, further, sections 22(a), 166 and 167, *supra*,
are inapplicable, following *Commissioner v. Bateman*,
127 Fed. (2d) 266, affirming 43 B. T. A. 69, and dis-
tinguishing *Helvering v. Clifford*, 309 U. S. 331.

WILLIAM GALBALLY, JR., Esq.,
A. CALDER MACKAY, Esq.,
ADAM Y. BENNION, Esq.,
For the Petitioners.

B. H. NEBLETT, Esq.,
For the Respondent.

OPINION

Arnold, Judge:

These consolidated cases involve income tax de-
ficiencies as follows:

| Docket No. | Petitioner | 1938 | 1939 | 1940 | 1941 |
|---------------|-------------------------|-----------|-------------|------------|------------|
| 3033— | May C. Goodan | \$ 948.67 | \$22,609.55 | \$1,897.63 | \$1,346.77 |
| 3036— | Marian O. Chandler..... | 65,870.01 | 8,995.62 | 14,114.00 | 7,755.73 |
| 3037— | Norman Chandler | 5,861.44 | 3,162.91 | 4,506.34 | 9,382.14 |
| 3038— | Philip Chandler | 1,263.65 | 1,577.23 | 1,933.15 | 2,251.08 |
| 3039— | Constance C. Crowe.... | 2,456.66 | 2,066.75 | 3,106.89 | 1,866.62 |
| 3040— | Helen C. Garland..... | 1,138.18 | 1,028.68 | 2,084.37 | 935.39 |
| 3041— | Ruth C. Williamson | 937.67 | 2,658.92 | 1,737.50 | 691.24 |

The parties stipulated that there is no penalty
liability under section 293(a), Revenue Act of 1938,
for the taxable year 1938 in Docket No. 3037.

Numerous issues have been settled by the parties
with the result that a single issue, common to each

case for each taxable year, remains for decision, namely, whether certain taxable stock dividends received by a trust are taxable to the trust or to its grantors, seven of whom are petitioners herein.

The parties have stipulated the amount of the deficiency in each case for each taxable year if we decide the sole issue in favor of the respondent. The parties have also stipulated the amount of the deficiency or overpayment in each case for each taxable year if we decide the sole issue in favor of the petitioners. The parties have stipulated all facts deemed pertinent hereto. Their stipulation is incorporated herein by reference and the pertinent facts hereinafter summarized.

The income tax returns for the years involved herein were filed with the collector of internal revenue for the sixth district of California.

The trust involved herein, Chandler Trust No. 2, was created on June 26, 1935, by the execution of a trust agreement. The petitioners herein and Harrison G. O. Chandler executed the agreement as trustors and as trustees. At no time since its execution has the trust agreement been altered, amended or modified.

Marian Otis Chandler is the mother of Harrison G. O. Chandler and the other six petitioners. At June 26, 1935 she was 68 years of age, her children ranged from 42 to 28 years of age, and her 13 grandchildren from 18 years to two months. All of the said individuals are living at the present time, except one grandchild, who died in June, 1943.

At the time the trust agreement was executed

Marian Otis Chandler conveyed to the present trustees and their successors 16,536 shares of stock of Chandis Securities Company, hereinafter referred to as Chandis. Each of the other seven trustors conveyed to the present trustees and their successors a certificate representing 50 shares of stock of The Times-Mirror Company, hereinafter referred to as The Times, and two certificates representing 2,694 shares of stock of Chandis.

The certificates of stock were endorsed by the respective trustors on June 27, 1935 and delivered to The Times and Chandis for cancellation. A new certificate representing 350 shares was issued by The Times and a new certificate representing 35,394 shares was issued by Chandis in the names of, and delivered to, the trustees on June 27, 1935. From that date to the present time, the trustees have kept the certificates.

The trust indenture, after specifically naming petitioners and Harrison G. O. Chandler as "the Trustors," as "the 'present Trustees' " and as "the 'present beneficiaries'," provides in part and in summary as follows:

Witnesseth

That, Whereas the Trustors deem it to be for their best interest, and for the best interests of The Times-Mirror Company and the Chandis Securities Company, that there should be a continuity and stability of policy and management, and to that end that the interests of each of the Trustors in said corporations, as evidenced by

the stock severally held by them, be united and vested in the Trustees, as hereinafter provided; and

Whereas, the Trustors deem it also to be for their best interests that there should be held, conserved, administered and eventually distributed, according to the terms hereof, those assets which are respectively contributed by them to the Trust Estate;

* * *

Article I of the trust indenture segregates the trust corpus into two parts. It provides that one part

* * * shall consist of all of the shares of capital stock of The Times-Mirror Company delivered to the Trustees hereunder, and the other part shall consist of all of the shares of the capital stock of Chandis Securities Company delivered to the Trustees hereunder, and such division and segregation shall be continued throughout the term of this trust.

The legal and equitable title to the trust estate was vested in the trustees and no interest therein "is, or at any time shall be, deemed to be vested in any of the beneficiaries hereunder. The interests of the beneficiaries shall at all times consist only and solely of the right to enforce the due performance of this trust."

Article II deals with the gross income from the trust. It provides that gross income from each divi-

sion of the trust estate (The Times stock and the Chandis stock) shall be charged with the taxes, costs, charges and expenses applicable to administering, protecting and distributing that portion of the trust estate. General and indirect costs, charges and expenses were to be allocated to the two parts as the trustees determined.

Article III deals with the distribution of the net income. It provides that the "entire net income received from the trust estate and available in cash for distribution, shall be paid in monthly, quarterly, or other convenient installments" as the trustees may from time to time determine the net income from The Times stock to be distributed in equal shares to the seven individuals who contributed that stock and the net income from the Chandis stock to be distributed during their lives, 16,536/35,394 to Marian Otis Chandler and 2,694/35,394 to each of the other seven trustors.

Article III also provides as follows:

There is hereby expressly reserved to each of the Trustors, during his or her lifetime, the absolute power of appointment and disposition of his or her share of the principal and income of the Trust Estate after his or her death, the same to be exercised not by Will, but only by the last written instrument exercising such power on file with the Trustees at such Trustor's death. Such power may be exercised, but only in the manner herein specified, from time to

time, and each exercise thereof may be similarly revoked.

Failing such appointment and disposition so on file at the time of trustor's death, the trust income to which a deceased trustor would have been entitled is to be distributed to his or her spouse for life, then to their issue, if any, then to the living heirs of such trustor, during their respective lives until termination of the trust. Similarly, the trustor's share of principal upon termination of the trust is vested in and distributed to his or her then living issue in equal shares, per stirpes, if none survived then to the living heirs-at-law, the identity and respective shares of which is to be determined by California law in force at the time of the trustor's death.

Article IV provides that the trust "shall cease upon, and in no event shall its duration extend beyond, the death of the last survivor of the following named persons, * * *." The 21 persons named in the trust indenture were the eight trustors and 13 grandchildren, whose ages ranged from 68 years to two months, as above mentioned.

Article V, entitled "As to Trustees," provides that when the "present Trustees" shall have been reduced to three in number, the survivors shall appoint and constitute additional trustees, so that there shall always be, except for temporary vacancies, seven trustees until the termination of the trust. The additional trustees were to be selected, so far

as possible, from the then beneficiaries of the trust, "giving preference to those who may be executives of" The Times and Chandis, "so long as shares of stock of the respective companies are held in the Trust Estate." Other persons, including a bank or trust company, could be selected as additional trustees, but a majority of the trustees who were at the same time beneficiaries, could remove any or all of such other persons. Long continued absence from California or the County of Los Angeles, incapacity or inability to act constituted a valid reason for removal of any trustee by the remaining trustees, whether a beneficiary or not. Except in instances where unanimity or determination by trustees who are also beneficiaries is specifically provided, the decision of a majority of the trustees shall be deemed the decision of all. The trustees shall choose from their number a chairman and a secretary, one or more special custodians of funds or property, and one or more for the collection and disbursement of funds of the trust estate. The trustees were authorized to appoint other agents, depositaries, auditors, advisers, brokers, attorneys and other consultants. They were required to adopt rules of procedure for their meetings, keep records thereof, fix regular places and times for meetings with provision for notice thereof, all as they may from time to time determine in the efficient administration of the trust estate. The books of account, minutes of meetings and other records of the trust were to be subject to inspection to such extent as the trustees may from time to time determine.

Article VI, entitled "Powers of the Trustees", provides as follows:

The Trustees are specifically empowered to receive and collect the principal and income of the Trust Estate, invest and reinvest the principal available therefor, and as hereinabove provided, to pay, accumulate, use and apply the income, and at the termination of the trust, to distribute the principal of the Trust Estate.

To carry out the express purposes of this trust, and in aid of its execution, and the proper administration, management and distribution of the Trust Estate, the Trustees are vested with the following additional powers and discretions:

(1) The shares of stock The Times Mirror Company, hereinabove described, and the shares of stock of Chandis Securities Company, hereinabove described, shall be sold, exchanged or otherwise disposed of only by the unanimous decision of the present or succeeding Trustees herein named; after the present and succeeding Trustees herein named are reduced to three in number, by the unanimous decision of the Trustees who are then beneficiaries hereunder;

(2) Similar unanimity shall be required for a determination of the Trustees to borrow upon or pledge, or in any manner hypothecate or alienate or transfer or otherwise dispose of any interest in or to said shares. No portion, or less than the entire number of said shares, shall be sold, pledged, or otherwise disposed of, except in the event of such emer-

gency that such partial disposition shall serve to avert the loss of the whole, or to protect the remaining shares.

In aid of the determination to be arrived at by the Trustees in the situations herein contemplated, it is the Trustors' desire and request that the powers herein conferred, which are contingent upon the unanimous decision of the Trustees, shall be exercised only to maintain such a proportionate interest as is now represented in The Times Mirror Company and Chandis Securities Company, or in the event of an emergency, to protect as much thereof as may be possible under such circumstances;

(3) It being the desire of all the parties hereto that Norman Chandler shall eventually succeed to the position of President and General Manager of The Times Mirror Company, the Trustees shall vote said shares for such Directors as will carry out this desire. The unanimous decision of the Trustees shall be required in order to vote for such Directors as will not choose Norman Chandler as the President and General Manager of the Times Mirror Company, but if it should be unanimously determined that some one other than Norman Chandler shall be President and General Manager of The Times Mirror Company, then a decision by a majority of the Trustees shall be sufficient to choose his successor;

(4) The unanimous decision of all of the Trustees shall be requisite to exercise the following powers with reference to the stock of The Times Mirror

Company and Chandis Securities Company, so long as it shall constitute a part of the Trust Estate:

(a) To vote for any increase of capitalization of The Times Mirror Company and/or Chandis Securities Company, which increase is proposed to be sold to the stockholders, or others, and not issued by way of stock dividend;

(b) To vote for or consent to the incurring of any bonded indebtedness or other long term loan which requires the approval of stockholders, or shall be submitted to them;

(c) To vote for or consent to any new classes of stock, or any reclassification of stock which might vary the rights of stockholders as to voting or other preferences;

(d) To enter into any voting trust or other lawful agreement with other stockholders for the purpose of concentrating or unifying the control of stock of The Times Mirror Company and/or Chandis Securities Company, and to deposit shares under such agreement;

(5) The Trustees, if the shares of stock of The Times Mirror Company and/or Chandis Securities Company should be sold or otherwise disposed of, or if there should be any liquidation, partial or otherwise, of the assets thereof, or a distribution to the stockholders thereof of any proceeds of sale as a result of which assets of substantially different character are received by the Trustees, then and in that

event, but not otherwise, are vested with the following additional powers and discretions:

(a) To retain such property and to continue to operate any business in connection therewith for such time as the Trustees may deem advisable or expedient;

(b) To manage, control, sell, convey, exchange, or otherwise dispose of, or partition, divide, sub-divide, improve or repair such property and in connection with its disposal, to grant options and to sell upon deferred payments;

(c) To borrow upon, mortgage, pledge, or otherwise encumber such property;

(d) To lease such property, or any part thereof, for terms extending beyond the duration of this trust, and to grant for like terms the right to mine, or drill for and remove therefrom gas, oil and other minerals;

(e) Respecting bonds, shares of stock and other securities, notes, accounts and other choses in action, to have and exercise all the rights, powers and privileges of an owner, including (though without limiting the foregoing) voting, giving of proxies, payments of assessments and other sums deemed by the Trustees to be expedient for the protection thereof, assenting to corporate sales, leases and encumbrances, participating in voting trusts and

pooling agreements, selling or exercising stock subscription or conversion rights, participating in foreclosures, reorganizations, mergers and liquidations, and in connection therewith depositing securities with protective or other committees, on such terms as the Trustees may deem expedient; to sue upon or otherwise enforce collection of any note or other obligation, or to compromise any claim or demand based thereon;

(f) To invest such principal receipts as are in the form of cash in conservative securities to such an extent as the Trustees shall deem advisable or expedient, but such investment of cash shall not be limited to conservative securities if the Trustees shall deem that any one or more of the following courses shall better protect the Trust Estate, or shall be more conservative as providing for a greater diversification:

(1) To purchase property, whether real or personal, to such extent as the Trustees may deem expedient or desirable, as providing protection from the possibility of monetary disorders or securities devaluations or deflations, or monetary or other inflation, or to avert or lighten onerous taxes or other Governmental charges;

(2) To make such conservative loans or advances upon collateral or upon real estate for

such term, either within or extending beyond the duration of this trust and at such rate of interest as the Trustees may deem to be for the best interests of the Trust Estate;

The enumeration of those certain powers and discretions of the Trustees, as are set out in this Paragraph (5) shall not be construed as limiting the general powers and discretions herein vested in the Trustees, it being the intent of the Trustors that in the events provided for in this Paragraph, the Trustees shall have, and they are hereby vested with, all of the powers and discretions that an absolute owner of property has or may have.

(6) Regardless of the character of the Trust Estate, the Trustes shall have the following general powers and discretions:

(a) To determine in their discretion what is principal of the Trust Estate, gross income or net distributable income therefrom; except that all bonuses, royalties and recoveries from mines, gas or oil leases or wells, all stock dividends and proceeds of sale of stock rights and all gain or loss which may result from the payment, retirement or sale of stocks, notes, bonds or other securities, or on foreclosure or other realization upon mortgages and trust deeds, shall inure to or fall upon principal, and all cash dividends (other than liquidating dividends stated in writing to be such by the corporation paying the same, or proved to the satisfaction of the

Trustees to be such prior to its disbursement thereof) shall go to income of the Trust Estate. The net income from real property acquired by the Trustees on or by acceptance of conveyance in lieu of foreclosure, shall go to income of the Trust Estate. Brokers' or other commissions and expenses on purchase or sale of trust property shall be charged against principal;

(b) To hold property of the Trust Estate in their own names, or in the names of one or more of their number, or in the name of their nominee, with or without disclosing such fiduciary relationship;

(c) To appoint or employ servants, including agents, auditors, brokers, attorneys and other consultants and advisers, and provide for their compensation;

Any Trustee who is not a beneficiary may receive such reasonable compensation for his services as Trustee, as the remaining Trustees may agree upon at the time of his or its appointment. Any Trustee may be compensated for any special or extraordinary or unusual services if such compensation shall be agreed upon in advance of the rendition of such services;

(d) The Trustees may maintain and administer the Trust Estate undivided and as a unit, and shall not be required to make physical division or segregation thereof, except if, when and to the extent required to make distribution

thereof, as in this trust provided, but the Trust Estate shall be deemed to be theoretically divided into as many units as there are beneficiaries and in proportion to their respective interest in the income;

(e) To allot, partition and distribute the Trust Estate for such valuations and according to such method or procedure as the Trustees may determine upon, and to do so in kind, or partly in kind and partly in money, according to their valuation thereof;

(f) To construe this agreement, and the construction of the same made in good faith shall be final, conclusive and binding upon all beneficiaries;

All discretions in this trust conferred upon the Trustees shall, unless specifically limited, be absolute and their exercise shall be conclusive on all persons interested in this trust or the Trust Estate.

Article VII, entitled "Liabilities of the Trustees", specifies that the trustees assume no personal liabilities of the "Trustees", specifies that the trustees assume no personal liability in respect of any action taken by them, except for his, her, or its own gross negligence or willful misconduct. It also provides that any trustee may be a member, shareholder, director, officer or trustee of any other corporation, firm, trust or association with which the trustees may deal; may become pecuniarily interested in any matter or transaction to which the trustee may be a

party, provided the nature of such relationship is fully disclosed to the remaining trustees; may buy from, sell to, or deal with the trustees so long as a majority of all the trustees have notice of such interest of such trustee in the transaction and shall approve thereof. The trustees shall render to the beneficiaries an annual statement of receipts, disbursements and assets as soon after the close of the fiscal period as practicable. The approval of such account by the adult beneficiaries competent to act constitutes a full and complete acquittance and discharge of the trustees as to the transactions, receipts and disbursements reflected therein.

Article VIII is entitled "As to Beneficiaries." It contains provisions restraining each beneficiary from alienating, anticipating, encumbering or in other manner assigning his or her interest, and other provisions common to so-called spendthrift trusts. It also provides in part as follows:

If any beneficiary shall, either directly or indirectly, singly or in conjunction with other persons, seek to establish or assert any claim to the Trust Estate or to the income therefrom except as it herein specifically provided, or shall attempt to impair, invalidate or set aside any of the provisions hereof, or to have the same or any part thereof declared void or diminished, or to defeat or change any part of the plan of administration and distribution, as contemplated hereby, or shall attempt to settle or compromise, directly or indirectly, either in or out of

court, with any persons seeking so to do, or shall consent or acquiesce in, or fail to contest such proceedings, then and in that event, anything to the contrary hereinabove stated notwithstanding, such person or persons shall thereupon cease to have any further interest or estate hereunder and the interest or share which would otherwise have gone to such person or persons shall go to augment the share or shares of those who shall not have joined in, assisted, consented to or acquiesced in such proceedings.

The beneficiaries hereunder shall have no control or authority over the Trustees in any particular whatsoever, their entire interest hereunder being to receive the income, and at the termination of this trust, the principal, in the manner and to the extent determined by the Trustees. The acts of the Trustees and the powers and discretions herein vested, shall, except for lack of good faith, be conclusive upon all beneficiaries hereunder.

Article IX is entitled "General Provisions". It provides that persons dealing with the trustees shall not be required to see to the application of the purchase money or other consideration passing to the trustees and were not required to see that the terms of the trust were complied with. The provisions of the trust agreement are declared to be severable, and the adjudged invalidity of any provision was not to effect the remaining provisions of the trust agreement. The concluding paragraph of Article IX provided as follows:

This agreement and each and every provision hereof shall be, and is hereby, declared to be irrevocable and cannot be terminated by the parties hereto, by the beneficiaries hereunder, or by any court or otherwise, prior to the expiration of its full term, as herein fixed;

Provided, however, that the Trustors, during their joint lives, have reserved, and do hereby reserve, the right by their unanimous agreement in writing and filed with the Trustes to modify, amend, construe, define or otherwise vary the terms of the provisions of Articles II, III, V, VI, VII and IX hereof, but no such modification shall be effective, directly or indirectly, to change the provisions as to the duration of this trust or the initial character of the Trust Estate, as provided in Articles I, IV, and VIII, the provisions of which last numbered Articles shall be in all respects and in each and every provision thereof be and remain irrevocable.

The total property owned by the trust during the taxable years consisted of (a) a small amount of principal cash (\$607.83 during 1938 and 1939, and \$7.83 during 1940 and 1941), (b) 350 shares of stock of The Times, (c) 35,394 shares of common stock of Chandis, and (d) shares of preferred stock of Chandis as follows:

| | |
|-------------------------|--------------|
| December 31, 1937 | 884 shares |
| December 31, 1938 | 1,591 shares |
| December 31, 1939 | 2,304 shares |
| December 31, 1940 | 3,011 shares |
| December 31, 1941 | 3,541 shares |

The gross cash receipts and expenditures of the trust for each of the taxable years were as follows:

| Gross Cash Receipts | 1938 | 1939 | 1940 | 1941 |
|--------------------------------------|-------------|-------------|-------------|--------------|
| Dividends on Times stock | \$26,950.00 | \$32,375.00 | \$35,000.00 | \$ 35,000.00 |
| Dividends on Chandis stock | 62,918.30 | 54,343.81 | 62,501.23 | 77,692.39 |
| Total | \$89,868.30 | \$86,718.81 | \$97,501.23 | \$112,692.39 |
| Expenditures | | | | |
| Office expense | \$ 303.40 | \$ 295.80 | \$ 299.86 | \$ 295.80 |
| California State Income Tax | 6,292.03 | 4,420.00 | 4,420.00 | 4,617.76 |
| Total | \$ 6,595.43 | \$ 4,715.80 | \$ 4,719.86 | \$ 4,913.56 |
| Net | \$83,272.89 | \$82,003.31 | \$92,781.37 | \$107,778.83 |

The office expenses set forth above represented compensation paid for part time clerical services in keeping the trust's books and records.

During the taxable years the trust received, as taxable stock dividends on its Chandis common stock, the following number of shares of Chandis preferred stock, which had a fair market value equal to its par value:

| Year | Number of Preferred Shares | Fair Market Value |
|-----------|-------------------------------|----------------------|
| 1938..... | 707 | \$70,000.00 |
| 1939..... | 707 | 70,700.00 |
| 1940..... | 707 | 70,700.00 |
| 1941..... | 530 | 53,000.00 |

The trust reported the taxable stock dividends and paid income taxes during each of the taxable years as follows:

| | |
|-----------|-------------|
| 1938..... | \$27,220.00 |
| 1939..... | 17,942.00 |
| 1940..... | 17,942.00 |
| 1941..... | 26,404.40 |

The income taxes were paid with cash contributed by petitioners in accordance with their respective interests in the trust.

The net cash income distributable and distributed under the terms of the trust agreement to the respective beneficiaries, reported by the beneficiaries in their respective income tax returns and upon which they paid individual income taxes, was as follows:

| | 1938 | 1939 | 1940 | 1941 |
|--------------------------|-------------|-------------|-------------|--------------|
| Marian O. Chandler | \$26,442.77 | \$23,273.78 | \$27,079.86 | \$ 34,085.00 |
| May C. Goodan | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Ruth C. Williamson | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Helen C. Garland | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Harrison Chandler | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Philip Chandler | 8,118.57 | 8,389.89 | 9,385.93 | 10,527.69 |
| Norman Chandler | 8,118.59 | 8,389.89 | 9,385.93 | 10,527.69 |
| Constance C. Crowe | 8,118.58 | 8,389.89 | 9,385.93 | 10,527.69 |
| Totals | \$83,272.87 | \$82,003.01 | \$92,781.37 | \$107,778.83 |

The principal business of The Times is, and since 1881 has been, the publication of "The Los Angeles Times", a newspaper with daily morning and Sunday editions. It has one class of stock, of which 5,760 shares were outstanding during the taxable years and for more than 10 years prior to June 26, 1935. At all times since 1884 a majority of the stock of The Times has been owned, directly or indirectly, by the father of Marian Otis Chandler, General Harrison Gray Otis, and his descendants. Immedi-

ately prior to the creation of the trust on June 26, 1935, shares of stock of The Times were owned as follows:

| Name of Stockholders | No. Shares |
|--|------------|
| Marian Otis Chandler | 1,634 |
| May C. Goodan | 50 |
| Ruth C. Williamson | 50 |
| Helen C. Garland | 50 |
| Harrison G. O. Chandler | 50 |
| Philip Chandler | 50 |
| Constance Chandler | 50 |
| Norman Chandler | 100 |
| Estate of Frances C. Kirkpatrick | 50 |
| Harry Chandler | 3 |
| Chandis Securities Company | 1,935 |
| Others | 1,738 |
| Total..... | 5,760 |

Chandis, which was a personal holding company during the years involved herein, was organized in 1916. On June 25, 1935, its outstanding stock consisted of 38,288 shares of common stock. Of these, Marian Otis Chandler owned 16,536 shares, her seven living children and the estate of her deceased daughter each owned 2,694 shares, and Harry Chandler owned 200 shares. Preferred stock of Chandis was first authorized and issued in 1937, and on December 31, 1941, there were 5,954 shares of such preferred stock outstanding. The purpose of Chandis in authorizing and issuing taxable stock dividends during the taxable years was to enable it to obtain dividends paid credits and at the same time retain a portion of its earnings in order to liquidate its outstanding obligations and those of its wholly-owned subsidiary, Southwest Land Company.

These consolidated cases present a single question of law, namely, whether the taxable stock dividends are to be taxed to the trust or to the grantors, seven of whom are petitioners herein. The trust reported the taxable stock dividends as its income and paid the tax thereon. The petitioners reported none of the taxable stock dividends in their income tax returns. The respondent determined that the dividends should be taxed proportionately to the trustors. His determination accounts for a portion of the deficiency of each petitioner in each taxable year.

A general statement of the opposing positions will be helpful in understanding the points hereinafter discussed. Respondent's brief states that

* * * for practical purposes it must be recognized that these eight individuals, all members of a family, constitute a single group whose interests are similar, and it is highly artificial and unrealistic to pretend that the members of this group have three different interests or motives when acting in their various capacities as trustors, trustees, and beneficiaries. These eight individuals, seven of whom are petitioners herein, have retained, in one capacity or another, either as individuals or as a group, all of the important attributes of outright ownership of the property.

Petitioners' position may be briefly summarized as follows: Chandler Trust No. 2 was created for reasons diametrically opposed to the purposes which

prompt the establishment of the Clifford-type trust. The eight trustors were adult members of the Chandler family. They owned certain capital stock outright with all the attributes of ownership. When they individually transferred this property to the trust, they relinquished many of these attributes of ownership. Thereafter, they were no longer outright owners of the stock but life tenants with powers to appoint the remainders. Thereafter, each was committed to support Norman Chandler for active management of The Los Angeles Times during his lifetime unless all agreed otherwise, including Norman Chandler. The purpose of the trust was to surrender and relinquish the unlimited rights of ownership previously enjoyed by each individual petitioner and trustor.

The first disputed point is whether a valid trust was created. Petitioners contend that a valid trust was created under the laws of California. They cite various California cases in support of their contention, most of which are considered in *Bixby vs. California Trust Co.* (1948), 190 P. (2d) 321. Respondent also cites and relies upon the latter case in support of his contention that the trust can be revoked by the unanimous action of the eight trustors. Respondent's theory, as we understand him, is that since the trustors by acting in unison may terminate the trust and take down the taxable stock dividends, the dividends are taxable proportionately to them.

Petitioners contend that no one of the trustors, nor all of them together, could terminate the trust

for the simple reason that it would be impossible to obtain the consent of all parties in interest under the law of California. The respondent says that "all parties in interest," whose consent must be obtained under California law to terminate the instant trust, means only the eight individual trustors, trustees, and "present beneficiaries." Our question then is to decide whether California law recognizes that there are parties in interest other than the eight individuals aforementioned.

In the Bixby case, *supra*, the trustor created a trust the income of which was payable to himself for life and upon his death the trustee, California Trust Company, was to distribute the trust corpus to his heirs-at-law in accordance with the laws of succession then in effect in California. Bixby sued in equity to terminate the trust, claiming he was the sole beneficiary, and as such was entitled in equity to a decree of termination. It was stipulated that Bixby had a wife, a father, a mother, and sisters living. The California court, after a careful consideration of the decided cases in California and elsewhere, held that Bixby was not the sole beneficiary of the trust; that he reserved a life estate in himself with contingent remainders to his heirs, who took by purchase and not by descent; that until the death of the creator no person could answer the description of heir; and that the trust could not be terminated without the consent of such beneficiaries.

In the Bixby case no power of appointment was retained by the creator or trustor. But in *Gray vs.*

Union Trust Co., 171 Cal. 637, 154 P. 306, the trustor transferred the property in trust for her lifetime and reserved a power of appointment exercisable by will. The trust agreement provided that in default of appointment the trust corpus should go to her heirs-at-law according to the laws of succession then existing. The trustor was entitled to the net income. The trust was to terminate at the trustor's death. The trustor sought the aid of equity to terminate the trust. The California court refused to terminate the trust holding, *inter alia*, that the trust created vested remainders in trustor's heirs subject to divestiture only upon her exercise of the power of appointment by will. The court pointed out that the trustee owed precisely the same duty to protect the rights of the indeterminable class of beneficiaries as to protect the rights of the named beneficiary, the trustor.

These consolidated cases present in each instance a situation where one trustor transferred property in trust to eight trustees, the income from his proportionate part of the corpus to be paid to him for his lifetime. After his death the income was to go to his spouse for life, then to their issue, if any, and then to the living heirs of the trustor during their respective lives until the trust terminated. The trustor gave his share of the trust corpus upon termination of the trust to his then living issue in equal shares, *per stirpes*, and if none survived, then to his living heirs at law in accordance with the laws of

succession of California in force at the time of the trustor's death.

We are convinced by the cited and other authorities that petitioners created with the trust vested remainders in their heirs; that no person answering the description of "heir" can be determined until the death of the trustor; that under such circumstances it is impossible to secure the consent of all parties in interest to a termination of the trust; and that in the absence of such consent a court of equity would refuse to terminate the trust.

The power of appointment reserved by each trustor does not, in and of itself, prevent the vesting of the remainders created by the trustor. Section 781 of the California Civil Code provides specifically that a "general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not exercised." See also Gray and Bixby cases, *supra*. Any exercise of the power of appointment by writing filed with the trustees can be revoked by a subsequent writing, and it cannot be said until a trustor's death whether trust income and corpus will go according to the trust indenture or according to his duly exercised power of appointment. But until such time as the remaindermen are divested of their interests, as provided in the trust indenture, they are beneficiaries of the trust who are entitled to take after the calling in of the life estate.

Respondent further contends that the trust is not valid for the reason that the trustors can, by the exercise of the right of amendment or modification, re-

served in Article IX, bring about the termination of the trust. The right, as reserved, is set forth in our findings. Reference thereto discloses that this right and the exercise thereof is extremely limited. In the first place the right existed only during the joint lives of the trustors. In the second place the trustors could exercise the right only by unanimous agreement among themselves. In the third place the right could be exercised only with respect to specified Articles in the trust instrument, one of which, Article III, is involved in respondent's present contention. A fourth limitation provided that no modification should be effective which directly or indirectly changed the duration of the trust, or the initial character of the trust estate as provided in Articles I, IV and VIII. And finally, the provisions of the last-mentioned three Articles were in all respects, and in each and every provision thereof, irrevocable.

The limitations placed upon the individual trustor's right to amend or modify certain Articles of the trust agreement are sufficient, in our opinion, to prohibit action in concert by the eight trustors to accomplish indirectly that which they could not accomplish directly. Any modification or amendment that would indirectly permit them to terminate the trust is banned by the trust indenture. The California authorities show that any contingent remainderman under the present trust could ask, and would receive, the aid of a court of equity to protect his beneficial interest if the trustors sought to extinguish his rights by terminating the trust.

When the trust provisions are read in the light

of the above rules we are convinced that the trustors could not have terminated the trust by amendment or modification of its provisions so as to exclude all beneficiaries except themselves. We are further convinced that the trustors manifested an intention to, and did, give beneficial interests in the trust income and corpus to persons other than themselves, and that some of such beneficiaries therein designated were indeterminable and could not, therefore, have consented to the termination of the trust. Since all the parties in interest could not have consented to the termination of the present trust, the rule contended for by respondent is inapplicable.

Respondent does not contend that either the trustors or the trustees had any power or discretion to make any distribution of the stock dividends to the present beneficiaries.

Respondent also contends that the trust is invalid for the reason that petitioners' interests in the trust are subject to the claims of creditors. He contends that the spendthrift trust provisions contained in Article VIII are, under the present circumstances, contrary to public policy and are invalid under California law, citing *McColgan v. Magee*, 172 Cal. 182, 155 P. 995, and Section 175, 25 Cal. Jur. 325. The rule in California, as in many other jurisdictions, is that where an individual conveys property to trustees and provides that the income shall be paid to himself, free of the claims of creditors, the attempt to evade his creditors' demands is ineffectual, and the property is subject to execution against him to

the same extent as property of which he has retained the legal title. *McColgan v. Magee*, *supra*. The rule does not depend upon any fraudulent intent of the trustor, but applies irrespective of his intent. *Bixby v. California Trust Co.*, *supra*; *McColgan v. Magee*, *supra*.

Apparently respondent's theory, although not so stated, is that since the trust is invalid as to petitioners' creditors, it is invalid for all purposes. The *McColgan* case, upon which he relies, does not so hold. *Bixby v. California Trust Co.*, *supra*. The latter case specifically holds to the contrary. Here, as in the *Bixby* case, there is no evidence that the trust was created for the purpose of defrauding creditors. Had the trust been created for that purpose the petitioners could not take advantage of their "own wrong in a court of equity to compel termination or extinguishment of the trust on that ground," 190 Pac. (2d) 321, 329. Here, as in the latter case, the declaration of trust created contingent remainders. Equity treats the trust as void only in so far as it operates to defeat the claims of petitioners' creditors. "In all other respects it is valid and its purposes have not been accomplished." *Idem*, p. 329. Since the petitioners cannot revoke the trust and since the rights of creditors invalidate the trust only with respect to the creditors' claims, without otherwise affecting its validity, we hold that for tax purposes a valid trust was created.

The second, third and fourth points in dispute are whether petitioners should be taxed on the stock dividends under, respectively, section 22 (a), section

166 or section 167, Revenue Act of 1938 and the Internal Revenue Code. Petitioners rely upon *Lady Marian Bateman*, 43 B.T.A. 69, as affirmed by the Circuit Court of Appeals for the First Circuit, 127 Fed. (2d) 266. Respondent relies upon *Stanley J. Klein*, 4 T.C. 1195, affirmed per curiam (CCA-3), 154 Fed. (2d) 58, certiorari denied, 328 U. S. 869. He distinguishes the *Bateman* case and contends that the trustors, individually or as a group, retained such important attributes of outright ownership of the property that they were the owners of the stock dividends in any event.

In the *Bateman* case the settlor created a trust which reserved to her a life interest in a portion of the trust income, a power to appoint the corpus effective upon her death, and provided that each year five per cent of the net income of the trust should be added to corpus. In the taxable years 1935 and 1936 the settlor received 95 per cent of the trust income. Respondent determined that she was taxable upon the entire net income of the trust under sections 22 (a), 166 or 167 of the applicable revenue acts. The settlor appealed and we held that she was not taxable upon the five per cent accumulated annually as a part of the trust corpus under any of the cited statutory sections, and the First Circuit affirmed.

We can not agree with the distinctions suggested by the respondent. The trust herein had as its principal purpose the family control of The Times stock so that Norman Chandler would be assured the presidency and general managership of The Los An-

geles Times. This was a business, and not a tax-avoidance, purpose. The receipt by the trustor-beneficiaries of substantially the same cash income from the trust as they would have received had the property not been conveyed in trust also refutes the respondent's suggestion that the trust was created for tax-avoidance purposes. Nor are we impressed with the suggested distinction that each trustor did not convey to independent trustees. It is true that each trustor was a member of the Chandler family, but it is also true that each was an adult member of that family. The trust was not dominated by one or both parents, as is frequently true in trusts created for tax-avoidance purposes. We are convinced that the other seven trustees were independent of the trustor-trustee who conveyed the property.

In determining whether the trustors are taxable under section 22 (a) a variety of factors and circumstances must be considered, no one of which is normally decisive, but all of which are relevant to the question of ownership. *Helferich v. Clifford*, 309 U. S. 331. It is established that each of the petitioners, prior to the conveyance in trust, owned the entire bundle of rights inherent in the ownership of the property transferred. We must decide whether, after the conveyance in trust, each trustor still retained, for all practical purposes, the ownership of that property.

After the conveyance no trustor could vote, pledge, alienate, or otherwise deal with his former Chandis stock. He could not receive cash or stock

dividends thereon. He could not exercise individually any of the rights of ownership with respect to that stock which he enjoyed prior to the conveyance. He could not sell, invest and reinvest the proceeds of any sale. He could not anticipate, assign or alienate his present right to receive trust income. His sole power over trust income was to appoint the beneficiary or beneficiaries entitled thereto after his death. He had no right to "sprinkle" trust income during his lifetime, as the trustor was entitled to do in *Commissioner v. Buck*, 120 Fed. (2d) 775. He had no right, individually or as trustee, to withhold income in his discretion, to accumulate income for the remainderman as against the life tenant, to treat corpus as if he were the owner thereof, to hold trust assets without disclosing the trust, to remove trust assets to some other jurisdiction, or to exercise any unusual or extraordinary powers, as the trustor-trustee was entitled to do in *Louis Stockstrom*, 3 T. C. 255, affirmed 148 Fed. (2d) 491. Here, a trustor had no power of management or control over corpus or income whatever, as such power was vested in eight trustees who could exercise their power in many instances only by their unanimous agreement, and in any event only by a majority vote of such trustees. No trustor could, at his pleasure, control the acts of, or remove, any trustee. No trustor could amend, alter, revoke or modify any provision of the trust indenture. Certain provisions of the indenture could be modified by the unanimous action of the trustors during their joint lives, but

no modification could be effective which directly or indirectly changed the duration of the trust or the initial character of the trust estate.

Respondent contends, however, that any attribute of ownership conveyed away by the individual trustees was vested in the family group, either as trustees or trustors, so that actually control and domination of the property and income continued unchanged. The powers granted the trustees do not support this contention. Paragraphs one to four of Article VI deal with the trust corpus while it consists of The Times and Chandis stock, and, generally speaking, requires the unanimous agreement of the eight trustees to act with respect thereto. Paragraph four provides for the management of the trust in the event that assets of a substantially different character are held by the trustees, a contingency which did not occur during any of the taxable years, so that the powers and discretions therein granted are inapplicable to the present issue. Paragraph six grants certain general powers and discretions to the trustees except that the trustees shall have no power or discretion to determine the nature of "all stock dividends," or "all cash dividends." The first, in the words of the indenture, "shall inure to or fall upon principal", and the other, "shall go to income of the Trust Estate." The powers and discretions vested in the trustees are fiduciary powers which must be exercised in good faith for the benefit of the beneficiaries and not for the personal benefit or aggrandizement of the trustors. Anthony

J. Drexel Biddle, Jr., et al., 11 T. C. (promulgated November 30, 1948).

Respondent also contends that the trustors, as a family group, retained dominion and control over corpus and income by reserving to themselves the power to modify the trust instrument. He reasons that by modification of the proper paragraphs of the instrument the trustors could take possession of the stock dividends. A brief examination of some of the trust provisions that would have to be modified under the reserved power will suffice to show that no such dominion and control was retained by the trustors.

In the first place, Article I requires that throughout the term of the trust the trust corpus shall consist of "all of the shares of the capital stock of Chandis Securities Company delivered to the Trustees hereunder." The stock dividends in question were preferred shares of Chandis and, by the provisions of Article VI, inured to and fell into principal. Such dividends became a part of, and remained a part of, corpus during the term of the trust. The provisions of Article VI (2) show that the powers conferred upon the trustees by the trustors were to "be exercised only to maintain such a proportionate interest as is now represented in" The Times and Chandis companies. Reference to Exhibit 2-B attached to the stipulated facts shows that the preferred stock carried voting rights of one and three-sevenths votes for each share of preferred, as compared to one vote for each share of common. Any

amendment by the trustors as a group that distributed the preferred stock would, therefore, destroy the proportionate interest that the trust had in Chandis. Such an amendment would change the initial character of the trust and would exceed the limited power of modification reserved by the trustors.

Another reason which makes any joint action by the trustors on the above amendment unlikely is the adverse interest of Norman Chandler. His personal interests would undoubtedly lead him to object to any modification that would hurt his chances to assume the presidency of The Times. Without his consent the other trustors would be powerless to modify the trust instrument in any particular.

A third deterring factor in making any such amendment is the rights of the remaindermen. As hereinabove pointed out, California law would not permit the trustors to terminate the trust upon the theory that they were the only interested parties. If the trustors could amend so as to distribute a part of the trust corpus, they could amend so as to distribute the entire corpus and thus terminate the trust. The law will not permit the trustors to accomplish by indirection that which they can not do directly. We are of the opinion that any remainderman could, by proper court action, prevent the trustors from distributing the corpus to the life tenants. Bixby case, *supra*.

What has been said with reference to Article I and the modification thereof applies with equal force

to the amendment of Article III. This Article provides for the distribution of the entire net income of the trust available in cash to the present beneficiaries. If the trustors amended this Article to require the distribution of all stock dividends, in addition to all cash dividends, then the situation would be identical with that above related. With each distribution of stock dividends the trust's proportionate interest in Chandis would decrease. In view of the declared purpose of the trust it can not be assumed that Norman Chandler would ever consent to any change or modification that was directly contrary to his interests. But if he consented, and if the trustors unanimously agreed to amend, the amendment would still violate the express terms of the trust and would exceed the limited power of modification reserved in Article IX.

Our findings show that during each of the taxable years trust corpus was increased by taxable stock dividends. It follows that the pro rata share of each trustor under the power of appointment retained in Article III was increased. This power could be exercised during the trustor's lifetime but was effective only at death. It could not be exercised to reduce corpus or income to the trustor's possession. It is suggested, however, that the power to appoint after death permitted the trustor to realize substantial economic benefits which can be taxed to the trustor under the broad sweep of section 22 (a). A similar contention was made and rejected in the Bateman case after the Circuit Court reviewed a number of

Supreme Court cases, including the Clifford case and *Helvering v. Horst*, 311 U. S. 112. We hold, therefore, that the trustors received no such substantial economic benefits under their reserved power of appointment as would justify our taxing the stock dividends to them as realized income.

The Klein case, *supra*, upon which respondent relies, is distinguishable factually and legally from these cases. Our opinion therein distinguishes that case from the Bateman case and points out (p. 1201) that it is more analogous to the Buck case, *supra*. These cases are unlike the Buck and Klein cases.

In view of the foregoing we hold that the stock dividends are not taxable to the trustors under Section 22 (a).

Respondent's alternative contentions, that sections 166 or 167 apply, are not well founded. As we have hereinbefore pointed out, this is not a revocable trust. Nor is there any basis for holding that the trustors could, by joint action, work a forfeiture, when they could not, by direct action, terminate the trust and take over the corpus. It is equally clear, in our opinion, that the taxable stock dividends were not held, used or accumulated for the benefit of the grantors. Such dividends became a part of trust corpus which would be distributed to those entitled to take at the expiration of the trust. We hold that sections 166 and 167 are inapplicable. *Commissioner v. Bateman*, *supra*.

The final dispute between the parties is whether the policy announced in T. D. 5488, C. B. 1946-1, 19,

and T. D. 5567, C. B. 1847-2, 9, amending section 29.22 (a)-21, Regulations 111, should be applied in this instance the amendments, which apply only to taxable years beginning with, or after January 1, 1946, were approved December 29, 1945, and June 30, 1947, respectively, and dealt with the taxation of trust income to the grantor within the principles of *Helvering v. Clifford*, *supra*.¹ In connection with the graphs one to four of Article VI deal with the trust amendments, the respondent, by Mim. 5968, C.B. 1946-1, 25, and Mim. 6156, C.B. 1947-2,13, stated that "it will be the policy of the Bureau, where no inconsistent claims prejudicial to the Government are asserted by trustees or beneficiaries, not to assert liability of the grantor for any prior taxable year under the general provisions of section 22 (a) of the Internal Revenue Code if the trust income would not be taxable to the grantor under the regulations as amended." Mim. 6156.

Petitioners contend that they are entitled to benefit from the foregoing statement of Bureau policy even though the amendments are not retroactive. This contention is obviously in the alternative, although not so stated. In other words, if petitioners lost on the other contentions they rely upon Bureau policy as above set forth. It is unnecessary to explore the arguments of the parties on this point in view of our conclusions on the other contentions.

¹The amendments need not be set forth in view of our disposition of this point.

For the reasons and upon the authorities above-mentioned we hold that petitioners created a valid trust; that they are not taxable under section 22 (a) as construed by the Clifford case, *supra*; that the trust is not revocable within the meaning of section 166; and that the trust income, in so far as the stock dividends are concerned, is not held or accumulated for future distribution for the benefit of the grantors within the meaning of section 167.

The parties have stipulated the deficiencies and overpayments in income taxes for the taxable years to be as follows in the event that we determine the stock dividends are not taxable to petitioners. (The amounts shown in parentheses represent overpayments):

| Taxpayers | 1938 | 1939 | 1940 | 1941 |
|--------------------------|-----------|-------------|-----------|-----------|
| May C. Goodan | \$ 317.48 | \$20,482.24 | (\$50.91) | \$ 240.32 |
| Marian O. Chandler | 21,301.69 | 42.61 | 184.38 | 626.45 |
| Norman Chandler | 4,592.52 | 918.09 | 1,218.56 | 1,840.23 |
| Philip Chandler | (13.79) | 407.21 | 300.00 | 1,209.86 |
| Constance C. Crowe | 1,577.88 | 938.28 | 1,286.73 | 700.51 |
| Helen C. Garland | 133.03 | 59.22 | 582.38 | 16.20 |
| Ruth C. Williamson | 96.65 | 1,583.92 | (48.66) | 234.79 |

It is further stipulated and agreed, and the Court may find as part of its decisions, that the deficiencies in amounts above stated were paid by the respective petitioners to the collector of internal revenue at Los Angeles, California, on December 31, 1946, with the following exceptions: in the case of May Chandler Goodan part payment of the deficiencies for the years 1938 and 1939 were made on June 30, 1944, in the amounts of \$236.42 and \$20,-

294.44, respectively, and the deficiency for 1941 has not been paid; in the case of Philip Chandler the deficiencies for the years 1939 to 1941 in the total amount of \$1,917.07 have been reduced by the overpayment for the year 1938 of \$13.79 and the net amount of \$1,903.28 was paid on December 31, 1946; and in the case of Ruth Chandler Williamson deficiencies for the years 1938, 1939 and 1941, less an overpayment for the year 1940, were paid on December 31, 1946, as follows:

| | |
|-----------------------|------------|
| 1938 | \$ 96.65 |
| 1939 | 5,290.50 |
| 1941 | 234.79 |
| | <hr/> |
| | \$5,621.94 |
| 1940 | 48.66 |
| | <hr/> |
| Net Amount Paid | \$5,573.28 |

It is further stipulated and agreed, and the Court may find as part of its decisions, that the overpayments above stated were made within three years before the mailing of the notices of deficiency or the filing of the petitions or the execution of consents under the provisions of section 276 (b) of the Internal Revenue Code or the Revenue Act of 1938, and that the notices of deficiency were mailed, the petitions were filed, or the consents were executed within three years from the time the returns were filed. (Section 322 (d) of the Internal Revenue Code and the Revenue Act of 1938, as amended by section 169 (b) of the Revenue Act of 1942 and section 509 of the Revenue Act of 1943.)

Reviewed by the Court.

Decisions will be entered accordingly.

Seal.

Kern, J., dissenting:

I am of the opinion that the powers retained by the trustors by Article IX of the Trust Indenture and specifically embracing the power to modify the provisions of Article VI, make this case more analogous to *Stanley J. Klein*, 4 T.C. 1195, *affd.* 154 Fed. (2d) 58, than to *Lady Marian Bateman*, 43 B.T.A. 69, *affd.* 127 Fed. (2d) 266; and therefore I respectfully dissent from the conclusion of the majority. *Turner, Murdock, and Disney, J.*, agree with this dissent.

Served May 23, 1949.

Seal

[Title of Tax Court and Causes.]

Docket Nos. 3033, 3036, 3037, 3038, 3039, 3040.
and 3041.

MOTION TO VACATE DECISION

Comes now the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and moves that the Tax Court's decision entered May 24, 1949, be vacated and set aside, and for cause therefor states:

The respondent has this date filed a motion for reconsideration for the following reasons:

1. *Bixby v. California Trust Company* (1949) 190P. (2d) 321, which furnished the chief basis for the petitioner's contention and the Court's Findings of Fact and Opinion herein has been reversed by the Supreme Court of California, *Bixby v. California Trust Company* (February 25, 1949) 202 P. (2d) 1018. Thus, the legal basis for the Court's Findings and Opinion no longer exists. Under the laws of California, as restated by the Supreme Court, the trust is revocable and the parties in interest could terminate it. Hence, a decision for respondent is required. *Bixby v. California Trust Company*, *supra*.

2. *Gray v. Union Trust Company*, 171 Cal. 637, 154 Pac. 306, also relied upon by the petitioners and the Tax Court was distinguished by the California Supreme Court in the *Bixby Case*, *supra*,

on the ground that the remaindermen (trustor's heirs) were to be determined by the laws of succession in effect at the time the trust was created. This distinction shows that the Gray case, *supra*, has no bearing on the instant cases. In the instant cases the purported "remainders" were to the trustor's "* * * living heirs at law in accordance with the laws of succession in California in force at the time of the trustor's death" (Page 20, Tax Court's Opinion herein). It is now manifest that under California law such language does not create a remainder interest. Moreover, see Justice Carter's concurring opinion that *Gray v. Union Trust Company*, *supra*, is not sound law and should be overruled.

3. Plainly, in the instant cases the heirs were to take the corpus in accordance with the laws of succession of California in force at the time of the trustor's death. Thus, therefore, under California law as restated the trust instrument created no remainder interest in the heirs at law. Therefore, the trust is revocable and terminable as contended for by respondent, making the stock dividends taxable to petitioners under Sections 22(a), 166 and 176 of the Internal Revenue Code.

4. Moreover, *Nelson v. California Trust Company* (February 25, 1949) 202 P. (2d) 1021 which case involved the identical trust as in the *Bixby v. California Trust Company* case, *supra*, and decided the same day, furnishes further support for

respondent's position as to the invalidity and non-effectiveness of the subject trust under California law.

5. As additional support for this motion, respondent refers to and incorporates his brief on file herein.

Wherefore, it is prayed that this motion be granted.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal
Revenue.

Of Counsel:

B. H. Neblett,
Division Counsel,

R. C. Whitley,
Special Attorney,
Bureau of Internal Revenue.

Received and filed June 7, 1949. U. S. T. C.

[Title of Tax Court and Causes.]

Docket Nos. 3033, 3036, 3037, 3038, 3039, 3040, and 3041.

ORDER VACATING DECISIONS

Decisions in the above-entitled causes were entered May 24, 1949. Thereafter, and on June 7, 1949, respondent filed a Motion to Vacate Decisions, and also a Motion to Reconsider and Set Aside The Tax Court's Findings of Fact and Opinion Herein. Hearing was had on said motions in Los Angeles, California, on June 13, 1949, and it appearing that our decisions should be vacated pending action on respondent's Motion to Reconsider and Set Aside The Tax Court's Findings of Fact and Opinion Herein, it is Now, Therefore,

Ordered: That the decisions entered herein on May 24, 1949, be and the same are hereby vacated.

/s/ WILLIAM W. ARNOLD,
Judge.

Washington, D. C.

Dated: August 15, 1949.

Served Aug. 16, 1949.

[Title of Tax Court and Causes.]

Docket Nos. 3033, 3036, 3037, 3038, 3039, 3040, and 3041.

ORDER DENYING RESPONDENT'S MOTION
TO RECONSIDER AND SET ASIDE FIND-
INGS OF FACT AND OPINION

On June 7, 1949 respondent filed separate motions. (1) To vacate our decisions entered May 24, 1949, and (2) to reconsider and set aside our findings of fact and opinion. The motions were argued in Los Angeles and the parties granted until July 28, 1949, and August 29, 1949, for briefs and reply briefs, respectively. On August 15, 1949, we vacated our decisions, pending action upon respondent's motion to reconsider and set aside our findings of fact and opinion. Full and complete consideration having been given to the parties' briefs and reply briefs on the motion and to our findings of fact and opinion, in 12 T.C. 817, it is

Ordered: That respondent's motion to reconsider and set aside our findings of fact and opinion, be and the same is hereby denied for the reasons briefly set forth in the memorandum accompanying this order.

Dated: Washington, D. C., November 30, 1949.

[Seal] /s/ WILLIAM W. ARNOLD,
Judge.

*Proceedings of the following petitioners are

consolidated herewith: Marian Otis Chandler; Norma Chandler; Philip Chandler; Constance Chandler Crowe; Helen Chandler Garland; and Ruth C. Williamson.

MEMORANDUM ACCOMPANYING ORDER

The principal ground for respondent's motion is that *Bixby v. California Trust Company* (1948), 190 P. (2d) 321, cited and relied upon in our report, was reversed by the Supreme Court of California in *Bixby v. California Trust Company* (February 25, 1949), 202 P. (2d) 1018, which was subsequent to the time this case was submitted to us. Respondent contends that under the California law, as restated by its Supreme Court in the 1949 *Bixby* decision, the present trust created no remainder interests in the heirs-at-law and the trust is revocable and terminable.

In its 1949 *Bixby* decision the California Supreme Court clearly stated the general rule to be: "*Where the trustor is the sole beneficiary * * **, he can compel termination *in the absence of a showing of incapacity or other reason why he should not be permitted to exercise control over his property * * **." [Emphasis supplied]. And with equal clarity the California Supreme Court stated the following limitation or exception to the general rule: "*On the other hand, if remainder interests were created in plaintiff's [Bixby] heirs, they were also beneficiaries, and the court could not terminate the trust without their consent.*" [Emphasis supplied].

Whether remainder interests were created in the trustor's heirs-at-law is a matter of intent according to the California Supreme Court. And where the trustor creates a life estate in himself with a gift over to his heirs he ordinarily intends the same thing as if he had given the property to his estate; he does not intend to make a gift to any particular person but indicates only that upon his death the residue of the trust property shall be distributed according to the general laws governing succession, and he does not intend to create in any persons an interest which would prevent him from exercising control over the beneficial interest. See 202 P. (2d) 1019.

Under well recognized rules of construction of written instruments all provisions of a trust indenture must be given consideration in arriving at the intent of the parties thereto. No trustor here provided for the termination of the trust on his or her death with gift over to heirs generally as in the Bixby case. On the contrary each trustor provided that upon his or her death trust income should go to a particular person, the spouse. In the event the spouse predeceased the trustor, the trust income was given to a particular class of persons, the issue. If no spouse and no issue survived the trustor then gave the trust income to the living heirs of the trustor until the termination of the trust. Similarly the trustor provided that upon termination of the trust the trust corpus was vested in and distributed to a particular class, namely, his or her then living issue, per stirpes; and if none survived, trust corpus

was to go, upon termination of the trust, to the living heirs-at-law, the identity and respective shares to be determined by California law in force at the time of the trustor's death. It was only after the natural objects of the trustor's bounty ceased to exist that the California law of succession was to take its course.

Nor could the trustors under the power of appointment reserved to them in Art. III of the trust instrument vest at death such an interest in the corpus as heirs generally take under California law. This is so for the reason that Art. IV fixes the termination of the trust upon the death of the last survivor of 21 named individuals. Art. IV. is irrevocable. Art. IX expressly prohibits the trustors from doing anything, directly or indirectly, that would terminate the trust prior to the expiration of the fixed term thereof, to vest the unrestricted ownership, use, possession and control of trust corpus in themselves or in their appointees, at or prior to the expiration of the fixed term of the trust. Should an attempt be made under the power of appointment to appoint corpus to heirs generally at death, the possession and control thereof would be held in abeyance until the death of the last survivor of the 21 named individuals. Corpus could not pass at death to the heirs.

Under well recognized rules of construction of written instruments all provisions of a trust indenture must be given consideration in arriving at the intent of the parties thereto. No trustor here pro-

vided for the termination of the trust on his or her death with gift over to heirs generally as in the Bixby case. On the contrary each trustor provided that upon his or her death trust income should go to a particular person, the spouse. In the event the spouse predeceased the trustor, the trust income was given to a particular class of persons, the issue. If no spouse and no issue survived the trustor then gave the trust income to the living heirs of the trustor until the termination of the trust. Similarly the trustor provided that upon termination of the trust the trust corpus was vested in and distributable to a particular class, namely, his or her then living issue, *per stirpes*; and if none survived, trust corpus was to go, upon termination of the trust, to the living heirs-at-law, the identity and respective shares to be determined by California law in force at the time of the trustor's death. It was only after the natural objects of the trustor's bounty ceased to exist that the California law of succession was to take its course.

Nor could the trustors under the power of appointment reserved to them in Art. III of the trust instrument vest at death such an interest in the corpus as heirs generally take under California law. This is so for the reason that Art. IV fixes the termination of the trust upon the death of the last survivor of 21 named individuals. Art. IV is irrevocable. Art. IX expressly prohibits the trustors from doing anything, directly or indirectly, that would terminate the trust prior to the expiration of the fixed term thereof, to vest the unrestricted

ownership, use, possession and control of trust corpus in themselves or in their appointees, at or prior to the expiration of the fixed term of the trust. Should an attempt be made under the power of appointment to appoint corpus to heirs generally at death, the possession and control thereof would be held in abeyance until the death of the last survivor of the 21 named individuals. Corpus could not pass at death to the heirs-at-law generally as the Supreme Court of California in the Bixby case said would be necessary to give trustors such rights of control as would make them in effect owners of the corpus. As the trustors could not vest the unrestricted use, possession and control of the corpus in their heirs-at-law at death, their appointees, whether heirs-at-law or others, would be in no better position under California law. In other words, the appointees take their interests subject to the terms of the trust agreement.

For the foregoing reasons the decisions vacated August 15, 1949 will be reentered.

Entered Nov. 30, 1949.

Served Dec. 1, 1949.

The Tax Court of the United States
Washington

Docket No. 3033

MAY CHANDLER GOODAN,

Petitioner,

Vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Opinion of this Court, promulgated May 23, 1949, it is

Ordered and decided: That there are deficiencies in income tax for the calendar years 1938, 1939 and 1941 in the respective amounts of \$317.48, \$20,482.24, and \$240.32; and that there is an overpayment in income tax for the calendar year 1940 in the amount of \$50.91, which overpayment was made within three years before the filing of the petition.

[Seal] /s/ WILLIAM W. ARNOLD,
Judge.

Entered Nov. 30, 1949.

Served Dec. 1, 1949.

In The United States Court of Appeals
For the Ninth Circuit

T. C. Docket No. 3033

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

MAY CHANDLER GOODAN,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on November 30, 1949 "That there are deficiencies in income tax for the calendar years 1938, 1939 and 1941 in the respective amounts of \$317.48, \$20,482.24, and \$240.32; and that there is an overpayment in income tax for the calendar year 1940 in the amount of \$50.91" in respect of the Federal income tax liability of May Chandler Goodan, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, May Chandler Goodan, is a resident of Los Angeles, California, and filed her Federal income tax returns for the years 1938, 1939, 1940 and 1941 with the Collector of Internal Revenue for the Sixth District of California, whose

office is in Los Angeles, California, and within the jurisdiction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought.

Nature of Controversy

The issue presented to and passed upon by The Tax Court of the United States and which was decided contrary to the Commissioner's determination is whether certain taxable stock dividends which were received by Chandler Trust No. 2, of which trust the respondent on review was one of the life tenant trustors are taxable to the life tenant trustors of the trust, as determined by the Commissioner, or, as claimed by the taxpayer, to the trust itself. The Tax Court held, contrary to the Commissioner's determination, that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable and that the stock dividends in question are taxable to the trust rather than to the life tenant beneficiaries and trustors. The Commissioner's determination in this and related cases was thus disapproved in so far as it reflected the Commissioner's inclusion of an allocate portion of the taxable stock dividends in the taxable income of each of the life tenant trustors for the years here involved.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for the Petitioner on Review.

[Endorsed]: Filed Feb. 17, 1950 U. S. C. A.

[Title of Court of Appeals and Cause.]

Docket No. 3033

STATEMENT OF POINTS

Comes now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In ordering the deciding that there are deficiencies in income tax for the years 1938, 1939 and 1941 in the respective amounts of only \$317.48, \$20,482.24 and \$240.32; and that there is an overpayment in income tax for the calendar year 1940 in the amount of \$50.91.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner, as modified by the stipulation of the parties, on the basis that the stock dividends received by the Chandler Trust No. 2 were taxable to the life tenant trustors.

3. In holding that the Chandler Trust No. 2 was, for Federal income tax purposes, a valid trust under the laws of California.

4. In failing and refusing to hold and decide that the Chandler Trust No. 2 was, by virtue of the rights

of amendment or modification reserved by the trustors, not a valid trust for Federal income tax purposes and that, accordingly, the taxable stock dividends received by the trust during the taxable years were taxable to the life tenant trustors under Sections 22(a) and/or Sections 166 and 167 of the Revenue Act of 1938 and the Internal Revenue Code, rather than to the trust itself.

5. In holding that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable.

6. In denying the Commissioner's motion to reconsider and set aside the Court's findings of fact and opinion.

7. In that its opinion and decision are contrary to the facts as stipulated by the parties.

8. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of service attached.

Received and filed May 4, 1950 U. S. C. A.

The Tax Court of the United States

Docket No. 3036

MARIAN OTIS CHANDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PB) dated June 30, 1943, and as a basis of this proceeding alleges as follows:

I

Petitioner is an individual residing at 2330 Hillhurst Avenue, Los Angeles, California. Returns for the period here involved were filed with the Collector for the Sixth District of California.

II

The notice of deficiency, a copy of which is attached hereto, marked "Exhibit A" and made a part hereof, was mailed to the petitioner on June 30, 1943.

III

The taxes in controversy are income taxes for the

calendar years 1938 to 1941, inclusive, totaling \$96,735.36.

IV

The determination of the taxes set forth in said notice of deficiency is based upon the following errors:

(1) Respondent erred in determining deficiencies in income tax for the years 1938 to 1941, inclusive, in the total sum of \$96,735.36.

(2) Respondent erred in adding to petitioner's net taxable income for the year 1938 the sum of \$20,184.88.

(3) Respondent erred in disallowing a loss of \$1333.33 sustained during the year 1938 on account of her interest in Imperial Valley Farm Lands Association becoming worthless.

(4) Respondent erred in adding to petitioner's net taxable income for the year 1938 the sum of \$93,735.18.

(5) Respondent erred in adding to petitioner's net taxable income for the year 1939 the sum of \$22,495.72.

(6) Respondent erred in increasing petitioner's net taxable income for the year by the sum of \$24,563.86.

(7) Respondent erred in increasing petitioner's net taxable income for the year 1941 by the sum of \$12,342.48.

V

The facts upon which petitioner relies as the basis of this proceeding are as follows:

(1) Petitioner is a resident of the County of Los Angeles, State of California, and as such filed her income tax returns for each of the years herein involved with the Collector of Internal Revenue for the Sixth Collection District of California.

(2) Petitioner during the years herein involved was a beneficiary under that certain trust designated Trust No. 2, wherein Marian Otis Chandler, May C. Goodan, Constance Chandler (Constance Chandler Crowe), Ruth C. Williamson, Norman Chandler, Harrison G. O. Chandler, Helen C. Garland, and Philip Chandler are designated "present trustees."

(3) Petitioner, as beneficiary, during the year 1938 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$26,442.77, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1938 was the sum of \$46,627.65, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$20,184.88. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(4) Petitioner during the year 1938 abandoned

her interest in the Imperial Valley Farm Lands Association, which had cost her the sum of \$1333.33. Notwithstanding this fact, the respondent erroneously and illegally disallowed such loss.

(5) Petitioner during the year 1938 did not receive, either actually or constructively, the sum of \$93,735.18, which the respondent erroneously and illegally added to petitioner's net taxable income.

(6) Petitioner, as beneficiary, during the year 1939 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$25,338.77, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1939 was the sum of \$47,834.49, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$22,495.72. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(7) Petitioner, as beneficiary, during the year 1940 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$27,079.86, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1940 was the sum of \$51,-

643.72, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$24,563.86. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(8) Petitioner, as beneficiary, during the year 1941 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$34,085.00, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1941 was the sum of \$46,427.48, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$12,342.48. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(9) Respondent, under date of June 30, 1943, issued a notice of deficiency determining that said Trust No. 2 was an association taxable as a corporation. Under date of June 30, 1943, respondent issued a notice of deficiency determining that Trust No. 1, wherein Harry Chandler, Norman Chandler, and Marian Otis Chandler are designated "present trustees," and petitioner and others are designated "beneficiaries," was an association taxable as a corporation. Petitioner is informed and believes

and therefore alleges that the trustees of each of the aforementioned trusts have filed or will file a petition to The United States Tax Court for a redetermination of the deficiencies set forth in said notices; and that the actions of the respondent in determining said trusts to be associations taxable as corporations and in determining the deficiencies herein involved are inconsistent, erroneous, and illegal.

Wherefore, petitioner prays that The Tax Court of the United States hear this petition and redetermine the aforesaid deficiencies in accordance with the rights of the petitioner in the premises and grant any and all refunds that may be due as a result of such redetermination.

Dated September 20, 1943.

/s/ A. CALDER MACKAY,

/s/ ARTHUR McGREGOR,

/s/ HOWARD W. REYNOLDS,

Counsel for Petitioner.

State of California

County of Los Angeles—ss.

Marian Otis Chandler, being duly sworn, deposes and says that she is the petitioner above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be

upon information and belief, and that those she believes to be true.

/s/ MARIAN OTIS CHANDLER.

Subscribed and sworn to before me this 23rd day of September, 1943.

[Seal] /s/ MARY E. WHITTHORNE,
Notary Public in and for said County and State.

My commission expires November 26, 1945.

EXHIBIT A

Form 1279

Treasury Department
Internal Revenue Service

417 South Hill Street
Los Angeles, 13, California

June 30, 1943

Office of
Internal Revenue Agent in Charge
Los Angeles Division

LA:IT:90D:PB

Mrs. Marian Otis Chandler,
2330 Hillhurst Avenue,
Los Angeles, California.

Madam:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1938 to 1941, inclusive, discloses a defi-

ciency of \$96,735.36, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By GEORGE D. MARTIN,

Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form of waiver.

Statement

LA:IT:90D:PB

Mrs. Marian Otis Chandler,
2330 Hillhurst Avenue,
Los Angeles, California.

Tax Liability for the Taxable Years Ended
December 31, 1938, to 1941, Inclusive

Income Tax

| Year | Liability | Assessed | Deficiency |
|-------------|--------------|-------------|-------------|
| 1938..... | \$ 73,276.99 | \$ 7,406.98 | \$65,870.01 |
| 1939..... | 18,017.39 | 9,021.77 | 8,995.62 |
| 1940..... | 31,639.94 | 17,525.94 | 14,114.00 |
| 1941..... | 17,143.88 | 9,388.15 | 7,755.73 |
| Total | \$140,078.20 | \$43,342.84 | \$96,735.36 |

This determination of your income tax liability has been made upon the basis of information on file in this office.

Adjustments to Net Income

Taxable Year Ended December 31, 1938

| | |
|--|--------------|
| Net income as disclosed by return..... | \$45,694.61 |
| Additional income and unallowable deductions: | |
| (a) Dividends received | \$ 129.50 |
| (b) Interest received | 174.50 |
| (c) Trust income | 20,184.88 |
| (d) Long-term capital losses disallowed | 950.06 |
| (e) Loss, Imperial Valley Farm Lands Association disallowed | 1,333.33 |
| (f) "Other income" | 93,735.18 |
| Net income adjusted | \$162,202.06 |

Explanation of Adjustments

(a) The following amounts of dividends received are not included in the amount reported in your return:

| | |
|------------------------------------|----------|
| United States Potash Company | \$ 45.00 |
| Security Company | 82.50 |
| Fiscal Fund, Inc. | 2.00 |
| Total | \$129.50 |

(b) The following amounts of interest received are not included in the amount reported in your return:

| | |
|------------------------------------|----------|
| Republic Natural Gas Company | \$ 16.00 |
| Earl Fruit Company | 137.50 |
| First Industries, Inc. | 21.00 |

| | |
|-------------|-----------------|
| Total | <u>\$174.50</u> |
|-------------|-----------------|

(c) Income from "Chandler Trust No. 2" taxable to you has been determined in the amount of \$46,627.65, in lieu of \$26,442.77 reported in your return, an addition to income of \$20,184.88.

(d) The cost of 1035 shares of Fiscal Fund, Inc., insurance stock, acquired by purchase on March 15, 1937, and by subsequent stock dividends, sold on October 5, 1938, has been determined as \$4,023.44, in lieu of \$4,336.65 claimed in your return, resulting in a disallowance of the claimed long-term capital loss to the extent of \$208.81.

The long-term capital loss of \$741.25 claimed on account of worthlessness of stock of Rockett Lincoln Film Co., is disallowed because the stock did not become worthless during the taxable year and no loss with respect thereto was sustained during the taxable year.

These adjustments result in the disallowance of net long-term capital loss to the extent of \$950.06.

(e) The loss of \$1,333.33 claimed under item 18 of your return as "Imperial Valley Farm Lands Association. A 1/3 interest in lands out of Trust 3074. Property has been abandoned" is disallowed for lack of substantiation that a loss was sustained by you in the taxable year.

(f) Income in the amount of \$93,735.18 taxable to you under section 22(a) of the Revenue Act of 1938 arose from cancellation of your debt of \$43,670.58 to Chandis Securities Company and your debt of \$50,064.60 to Chandis Securities Company and/or "Trust A-3872."

Computation of Alternative Tax

Taxable Year Ended December 31, 1938

| | | |
|--|-------------|---------------------|
| Net income adjusted | | \$162,202.06 |
| Plus: Net long-term capital loss | | 7,787.28 |
| Ordinary net income | | <u>\$169,989.34</u> |
| Less: Personal exemption | \$ 2,500.00 | |
| Credit for dependents | 800.00 | 3,300.00 |
| Balance (surtax net income) | | <u>\$166,689.34</u> |
| Less: Earned income credit | | 1,400.00 |
| Net income subject to normal tax | | <u>\$165,289.34</u> |
| Normal tax at 4% on \$165,289.34 | \$ 6,611.57 | |
| Surtax on \$166,689.34 | 69,013.60 | |

| | |
|--|---------------------|
| Partial tax | \$ 75,625.17 |
| Minus: 30% of net long-term capital loss | 2,336.18 |
| Alternative tax | <u>\$ 73,288.99</u> |

Computation of Tax

Taxable Year Ended December 31, 1938

| | |
|--|----------------------|
| Net income adjusted | \$162,202.06 |
| Less: Personal exemption | \$ 2,500.00 |
| Credit for dependents | 800.00 3,300.00 |
| Balance (surtax net income) | <u>\$158,902.06</u> |
| Less: Earned income credit | 1,400.00 |
| Net income subject to normal tax | <u>\$157,502.06</u> |
| Normal tax at 4% on \$157,502.06 | \$ 6,300.48 |
| Surtax on \$158,902.06 | 64,341.24 |
| Total | <u>\$ 70,641.32</u> |
| Alternative tax | \$ 73,288.99 |
| Total income tax | <u>\$ 73,288.99</u> |
| Less: Income tax paid at source | \$ 9.50 |
| Income tax paid to a foreign country or U.S. possession | 2.50 12.00 |
| Correct income tax liability | <u>\$ 73,276.99</u> |
| Income tax assessed: | |
| Original, account No. 832685 | 7,406.98 |
| Deficiency of income tax | <u>\$ 65,870.01</u> |

Adjustments to Net Income

Taxable Year Ended December 31, 1939

| | |
|---|----------------------|
| Net income as disclosed by return | \$50,530.08 |
| Additional income and unallowable deductions: | |
| (a) Dividends received | \$ 11.21 |
| (b) Interest received | 40.00 |
| (c) Trust income | 22,495.72 |
| (d) Long-term capital loss disallowed | 89.15 22,636.08 |
| Net income adjusted | <u>\$73,166.16</u> |

Explanation of Adjustments

(a) The following amounts of dividends received are not included in the amount reported in your return:

| | |
|----------------------------------|----------------|
| Fiscal Fund, Inc. | \$ 7.21 |
| State Street Investment Co. | 4.00 |
| Total | <u>\$11.21</u> |

(b) The amount of interest received reported in your return is understated \$40.00, representing an additional amount received on Province Santa Fe-Argentine bonds.

(c) Income from "Chandler Trust No. 2" taxable to you has been determined in the amount of \$47,834.49, in lieu of \$25,338.77 reported in your return, an addition to income of \$22,495.72.

(d) The long-term capital loss from the sale of Fiscal Fund, Inc., insurance stock, claimed in the amount of \$793.80 is disallowed to the extent of \$89.15 due to the determination of long-term capital loss in the amount of \$704.65, as follows:

| | |
|-----------------------------------|-------------------|
| Sale price | \$7,194.61 |
| Cost | 8,603.91 |
| Loss sustained | <u>\$1,409.30</u> |
| Long-term capital loss, 50% | \$ 704.65 |

Computation of Alternative Tax

Taxable Year Ended December 31, 1939

| | |
|--|--------------------|
| Net income adjusted | \$73,166.16 |
| Plus: Net long-term capital loss | <u>704.65</u> |
| Ordinary net income | \$73,870.81 |
| Less: Personal exemption | <u>2,500.00</u> |
| Balance (surtax net income) | \$71,370.81 |
| Less: Earned income credit | <u>1,400.00</u> |
| Net income subject to normal tax | \$69,970.81 |
| Normal tax at 4% on \$69,970.81 | \$ 2,798.83 |
| Surtax on \$71,370.81 | <u>15,449.45</u> |
| Partial tax | \$18,248.28 |
| Minus: 30% of net long-term capital loss | <u>211.39</u> |
| Alternative tax | <u>\$18,036.89</u> |

Computation of Tax

Taxable Year Ended December 31, 1939

| | | |
|--|-------------|-------|
| Net income adjusted | \$73,166.16 | |
| Less: Personal exemption | 2,500.00 | |
| Balance (surtax net income) | \$70,666.16 | |
| Less: Earned income credit | 1,400.00 | |
| Net income subject to normal tax | \$69,266.16 | |
| Normal tax at 4% on \$69,266.16 | \$ 2,770.64 | |
| Surtax on \$70,666.16 | 15,146.45 | |
| Total | \$17,917.09 | |
| Alternative tax | \$18,036.89 | |
| Total income tax | \$18,036.89 | |
| Less: Income tax paid at source | \$ 9.50 | |
| Income tax paid to a foreign country or U.S. possession | 10.00 | 19.50 |
| Correct income tax liability | \$18,017.39 | |
| Income tax assessed: | | |
| Original, account No. 202571 | 9,021.77 | |
| Deficiency of income tax | \$ 8,995.62 | |

Adjustments to Net Income

Taxable Year Ended December 31, 1940

| | | |
|---|-------------|-----------|
| Net income as disclosed by return | \$56,627.56 | |
| Additional income: | | |
| (a) Dividends received | \$ 172.19 | |
| (b) Interest received | 177.00 | |
| (c) Trust income | 24,563.86 | 24,913.05 |
| Net income adjusted | \$81,540.61 | |

Explanation of Adjustments

(a) The following amounts of dividends received are not included in the amount reported in your return:

| | |
|---------------------------------------|----------|
| San Fernando Mission Land Company.... | \$100.00 |
| Fiscal Fund, Inc. | 4.19 |
| New England Fund | 68.00 |
| Total | \$172.19 |

(b) The following amounts of interest received are not included in the amount reported in your return:

| | |
|-----------------------------------|-----------------|
| Earl Fruit Company | \$137.50 |
| Province Santa Fe-Argentina | 39.50 |
| Total | <u>\$177.00</u> |

(c) Income from "Chandler Trust No. 2" taxable to you has been determined in the amount of \$51,643.72, in lieu of \$27,079.86 reported in your return, an addition to income of \$24,563.86.

Computation of Alternative Tax

Taxable Year Ended December 31, 1940

| | |
|--|--------------------|
| Net income adjusted | \$81,540.61 |
| Plus: Net long-term capital loss | 3.46 |
| Ordinary net income | <u>\$81,544.07</u> |
| Less: Personal exemption | 2,000.00 |
| Balance (surtax net income) | <u>\$79,544.07</u> |
| Less: Earned income credit | 1,400.00 |
| Net income subject to normal tax | <u>\$78,144.07</u> |
| Normal tax at 4% on \$78,144.07 | \$ 3,125.76 |
| Surtax on \$79,544.07 | <u>25,652.03</u> |
| Partial tax | <u>\$28,777.79</u> |
| Minus: 30% of net long-term capital loss | 1.03 |
| Alternative tax | <u>\$28,776.76</u> |

Computation of Tax

Taxable Year Ended December 31, 1940

| | |
|--|--------------------|
| Net income adjusted | \$81,540.61 |
| Less: Personal exemption | 2,000.00 |
| Balance (surtax net income) | <u>\$79,540.61</u> |
| Less: Earned income credit | 1,400.00 |
| Net income subject to normal tax | <u>\$78,140.61</u> |
| Normal tax at 4% on \$78,140.61 | \$ 3,125.62 |
| Surtax on \$79,540.61 | <u>25,650.30</u> |
| Total | <u>\$28,775.92</u> |
| Alternative tax | <u>\$28,776.76</u> |
| Defense tax (10% of \$28,776.76) | 2,877.68 |
| Total income tax | <u>\$31,654.44</u> |

| | | | |
|--|----|------|--------------------|
| Less: Income tax paid at source | \$ | 9.50 | |
| Income tax paid to a foreign country or U.S. possession | | 5.00 | 14.50 |
| Correct income tax liability | | | <u>\$31,639.94</u> |
| Income tax assessed: | | | |
| Original, account No. 856258 | | | <u>17,525.94</u> |
| Deficiency of income tax | | | <u>\$14,114.00</u> |

Adjustments to Net Income

Taxable Year Ended December 31, 1941

| | | | |
|---|----|-----------|--------------------|
| Net income as disclosed by return | | | \$24,174.47 |
| Additional income and unallowable deductions: | | | |
| (a) Dividends received | \$ | 400.00 | |
| (b) Interest received | | 376.50 | |
| (c) Long-term capital losses disallowed | | 690.46 | |
| (d) Trust income | | 12,342.48 | 13,809.44 |
| Net income adjusted | | | <u>\$37,983.91</u> |

Explanation of Adjustments

(a) The following amounts of dividends received are not included in the amount reported in your return:

| | |
|----------------------------------|----------|
| New England Fund | \$240.00 |
| Pacific Finance Co. | 60.00 |
| Southern California Gas Co. | 75.00 |
| Gladding McBean | 25.00 |

| | |
|-------------|-----------------|
| Total | <u>\$400.00</u> |
|-------------|-----------------|

(b) The following amounts of interest received are not included in the amount reported in your return:

| | |
|-----------------------------------|----------|
| First Industries | \$150.00 |
| Province Santa Fe-Argentina | 226.50 |

| | |
|-------------|-----------------|
| Total | <u>\$376.50</u> |
|-------------|-----------------|

(c) The basis of \$4,787.50 claimed in your return for Richfield Oil Company stock sold is disallowed to the extent of \$958.50, resulting in the disallowance of long-term capital loss from the sale to the extent of \$479.25.

The basis of \$4,872.34 claimed in your return for Fiscal Fund, Inc., insurance stock, sold is disallowed to the extent of \$422.43, resulting in the disallowance of long-term capital loss from the sale to the extent of \$211.21.

(d) Income from "Chandler Trust No. 2" taxable to you has been determined in the amount of \$46,427.48, in lieu of \$34,085.00 reported in your return, an addition to income of \$12,342.48.

Computation of Alternative Tax

Taxable Year Ended December 31, 1941

| | |
|--|-------------|
| Net income adjusted | \$37,983.91 |
| Plus: Net long-term capital loss | 13,203.00 |
| Ordinary net income | \$51,186.91 |
| Less: Personal exemption | 1,500.00 |
| Balance (surtax net income) | \$49,686.91 |
| Less: Earned income credit | 1,400.00 |
| Net income subject to normal tax | \$48,286.91 |
| Normal tax at 4% on \$48,286.91 | \$ 1,931.48 |
| Surtax on \$49,686.91 | 19,207.80 |
| Partial tax | \$21,139.28 |
| Minus: 30% of net long-term capital loss | 3,960.90 |
| Alternative tax | \$17,178.38 |

Computation of Tax

Taxable Year Ended December 31, 1941

| | |
|--|-------------|
| Net income adjusted | \$37,983.91 |
| Less: Personal exemption | 1,500.00 |
| Balance (surtax net income) | \$36,483.91 |
| Less: Earned income credit | 1,400.00 |
| Net income subject to normal tax | \$35,083.91 |
| Normal tax at 4% on \$35,083.91 | \$ 1,403.36 |
| Surtax on \$36,483.91 | 12,141.96 |
| Total | \$13,545.32 |
| Alternative tax | \$17,178.38 |
| Total income tax | \$17,178.38 |
| Less: Income tax paid at source | \$ 9.50 |
| Income tax paid to a foreign country or U.S. possession | 25.00 34.50 |
| Correct income tax liability | \$17,143.88 |
| Income tax assessed: | |
| Original, account No. 930974 | 9,388.15 |
| Deficiency of income tax | \$ 7,755.73 |

Received and filed Sept. 27, 1943, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 3036

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I and II. Admits the allegations contained in paragraphs I and II of the petition.

III. Admits that the taxes in controversy are income taxes for the calendar years 1938 to 1941, inclusive, but denies that the total proposed deficiencies aggregating \$96,735.36 are in controversy; denies the remainder of the allegations contained in paragraph III of the petition.

IV. (1) to (7), inclusive. Denies that the respondent erred as alleged in subparagraphs (1) to (7), inclusive, of paragraph IV of the petition.

V. (1) and (2). Admits the allegations contained in subparagraphs (1) and (2) of paragraph V of the petition.

(3). Admits that the petitioner in her income tax return for the year 1938 reported \$26,442.77 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was the sum of \$46,627.65, and accordingly increased the net taxable income reported

by petitioner by the sum of \$20,184.88. Denies that respondent's determination was erroneous and denies the remaining allegations contained in subparagraph (3) of paragraph V of the petition.

(4) and (5). Denies the allegations contained in subparagraphs (4) and (5) of paragraph V of the petition.

(6). Admits that petitioner in her income tax return for the year 1939 reported \$25,338.77 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$47,834.49, and accordingly increased net taxable income reported by petitioner by the sum of \$22,495.72. Denies that respondent's determination was erroneous and denies remaining allegations of subparagraph (6) of paragraph V of the petition.

(7). Admits that petitioner on her income tax return for 1940 reported \$27,079.86 as income from Trust No. 2. Admits that respondent determined that the sum reportable by her from said source was \$51,643.72, and accordingly increased taxable net income reported by petitioner by the sum of \$24,563.86. Denies that the respondent's determination was erroneous, and denies the remaining allegations of subparagraph (7) of paragraph V of the petition.

(8). Admits that petitioner on her return for the year 1941 reported \$34,085.00 as income from Trust

No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$46,427.48, and accordingly increased net taxable income reported by petitioner by the sum of \$12,342.48. Denies that respondent's determination was erroneous, and denies the remaining allegations of subparagraph (8) of paragraph V of the petition.

(9). Denies the allegations contained in subparagraph (9) of paragraph V of the petition.

VI. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue

Of Counsel:

B. H. NEBLETT,
Division Counsel.
HAROLD D. THOMAS,
Special Attorney,
Bureau of Internal Revenue

Received and filed Nov. 17, 1943, T. C. U. S.

The Tax Court of the United States
Washington

Docket No. 3036

MARIAN OTIS CHANDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Opinion of this Court promulgated May 23, 1949, it is

Ordered and decided: That there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$21,301.69; \$42.61; \$184.38 and \$626.45.

[Seal] /s/ WILLIAM W. ARNOLD,
Judge.

Entered Nov. 30, 1949.

Served Dec. 1, 1949.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 3036

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

MARIAN OTIS CHANDLER,

Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on November 30, 1949, "That there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$21,301.69; \$42.61; \$184.38 and \$626.45" in respect of the Federal income tax liability of Marian Otis Chandler, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Marian Otis Chandler, is a resident of Los Angeles, California, and filed her Federal income tax returns for the years 1938, 1939, 1940 and 1941 with the Collector of Internal Revenue for the Sixth District of California, whose office is in Los Angeles, California, and within the

jurisdiction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought.

Nature of Controversy

The issue presented to and passed upon by The Tax Court of the United States and which was decided contrary to the Commissioner's determination is whether certain taxable stock dividends which were received by Chandler Trust No. 2, of which trust the respondent on review was one of the life tenant trustors, are taxable to the life tenant trustors of the trust, as determined by the Commissioner, or, as claimed by the taxpayer, to the trust itself. The Tax Court held, contrary to the Commissioner's determination, that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable and that the stock dividends in question are taxable to the trust rather than to the life tenant beneficiaries and trustors. The Commissioner's determination in this and related cases was thus disapproved in so far as it reflected the Commissioner's inclusion of an allocate portion of the taxable stock dividends in the taxable income of each of the life tenant trustors for the years here involved.

/s/ THERON L. CAUDLE,

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel,

Bureau of Internal Revenue.

Received and filed Nov. 17, 1943. U.S.C.A.

[Title Court of Appeals and Cause.]

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In ordering and deciding that there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941, in the respective amounts of \$21,301.69, \$42.61, \$184.38 and \$626.45.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner, as modified by the stipulation of the parties, on the basis that the stock dividends received by the Chandler Trust No. 2 were taxable to the life tenant trustors.

3. In holding that the Chandler Trust No. 2 was, for Federal income tax purposes, a valid trust under the laws of California.

4. In failing and refusing to hold and decide that the Chandler Trust No. 2 was, by virtue of the rights of amendment or modification reserved by the trustors, not a valid trust for Federal income tax purposes and that, accordingly, the taxable stock

dividends received by the trust during the taxable years were taxable to the life tenant trustors under Sections 22(a) and/or Sections 166 and 167 of the Revenue Act of 1938 and the Internal Revenue Code, rather than to the trust itself.

5. In holding that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable.

6. In denying the Commissioner's motion to reconsider and set aside the Court's findings of fact and opinion.

7. In that its opinion and decision are contrary to the facts as stipulated by the parties.

8. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of Service attached.

Received and filed May 4, 1950. U. S. C. A.

The Tax Court of the United States

Docket No. 3037

NORMAN CHANDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PB) dated June 30, 1943, and as a basis of this proceeding alleges as follows:

I.

Petitioner is an individual residing at 800 West Orange Grove Avenue, Sierra Madre, California. The returns for the period here involved were filed with the Collector for the Sixth District of California.

II.

The notice of deficiency, a copy of which is attached hereto, marked "Exhibit A" and made a part hereof, was mailed to the petitioner on June 30, 1943.

III.

The taxes in controversy are income taxes for the calendar years 1938 to 1941, inclusive, totaling \$23,205.90.

IV.

The determination of the taxes set forth in said notice of deficiency is based upon the following errors:

(1) Respondent erred in determining deficiencies in income tax for the years 1938 to 1941, inclusive, in the total sum of \$23,205.90.

(2) Respondent erred in adding to petitioner's net taxable income for the year 1938 the sum of \$17,840.29.

(3) Respondent erred in adding to petitioner's net taxable income for the year 1939 the sum of \$7221.48.

(4) Respondent erred in adding to petitioner's net taxable income for the year 1940 the sum of \$8400.59.

(5) Respondent erred in adding to petitioner's net taxable income for the year 1941 the sum of \$13,917.23.

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

(1) Petitioner is a resident of the County of

Los Angeles, State of California, and as such filed his income tax returns for each of the years herein involved with the Collector of Internal Revenue for the Sixth Collection District of California.

(2) Petitioner during the years herein involved was a beneficiary under that certain trust designated Trust No. 2, wherein Marian Otis Chandler, May C. Goodan, Constance Chandler (Constance Chandler Crowe), Ruth C. Williamson, Norman Chandler, Harrison G. O. Chandler, Helen C. Garland, and Philip Chandler are designated "present trustees."

(3) Petitioner, as beneficiary, during the year 1938 received as his full and complete share of the distributive net income of said Trust No. 2 the sum of \$8118.59, which he reported in his income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1938 was the sum of \$11,446.46, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$3327.87. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(4) Petitioner, as beneficiary, during the year 1939 received as his full and complete share of the distributive net income of said Trust No. 2 the sum of \$8389.89, which he reported in his income tax

return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1939 was the sum of \$12,418.08, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4028.19. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(5) Petitioner, as beneficiary, during the year 1940 received as his full and complete share of the distributive net income of said Trust No. 2 the sum of \$9385.93, which he reported in his income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1940 was the sum of \$13,413.66, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4027.73. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(6) Petitioner, as beneficiary, during the year 1941 received as his full and complete share of the distributive net income of said Trust No. 2 the sum of \$10,527.69, which he reported in his income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1941 was the sum of \$12,563.85, thereby

erroneously and illegally overstating petitioner's net taxable income by the sum of \$2036.16. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(7) Respondent, under date of June 30, 1943, issued a notice of deficiency determining that said Trust No. 2 was an association taxable as a corporation. Under date of June 30, 1943, respondent issued a notice of deficiency determining that Trust No. 1, wherein Harry Chandler, Norman Chandler, and Marian Otis Chandler are designated "present trustees" and petitioner and others are designated "beneficiaries," was an association taxable as a corporation. Petitioner is informed and believes and therefore alleges that the trustees of each of the aforementioned trusts have filed or will file a petition to The United States Tax Court for a redetermination of the deficiencies set forth in said notices, and that the actions of the respondent in determining said trusts to be associations taxable as corporations and in determining the deficiencies herein involved are inconsistent, erroneous, and illegal.

Wherefore, petitioner prays that The Tax Court of The United States hear this petition and redetermine the aforesaid deficiencies in accordance with the rights of the petitioner in the premises and grant

any and all refunds that may be due as a result of such redetermination.

Dated September 20, 1943.

/s/ A. CALDER MACKAY,

/s/ ARTHUR McGREGOR,

/s/ HOWARD W. REYNOLDS,

Counsel for Petitioner.

State of California

County of Los Angeles—ss.

Norman Chandler, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ NORMAN CHANDLER.

Subscribed and sworn to before me this 20th day of September, 1943.

[Seal]

/s/ C. O. DENNING,

Notary Public in and for said County and State.

My commission expires Sept. 3, 1947.

EXHIBIT A

Form 1279

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles, 13, California.

June 30, 1943

Office of
Internal Revenue Agent in Charge
Los Angeles Division

LA:IT:90D:PB

Mr. Norman Chandler,
800 West Orange Grove Avenue,
Sierra Madre, California.

Sir:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1938 to 1941, inclusive, discloses a deficiency of \$22,912.83 and \$293.07 in penalty, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C.,

for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner,

By GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form of waiver.

Statement

LA:IT:90D:PB

Mr. Norman Chandler,
800 West Orange Grove Avenue,
Sierra Madre, California.

Tax Liability for the Taxable Years Ended
December 31, 1938 to 1941, Inclusive

Income Tax

| Year | Liability | Assessed | Deficiency | 5% Penalty |
|------------|--------------|-------------|-------------|---------------|
| 1938..... | \$ 12,797.82 | \$ 6,936.38 | \$ 5,861.44 | \$293.07 |
| 1939..... | 17,329.61 | 14,166.70 | 3,162.91 | |
| 1940..... | 25,517.41 | 21,011.07 | 4,506.34 | |
| 1941..... | 55,927.63 | 46,545.49 | 9,382.14 | |
| Total..... | \$111,572.47 | \$88,659.64 | \$22,912.83 | \$293.07 |

This determination of your income tax and penalty liability has been made upon the basis of information on file in this office.

The 5 per cent penalty shown herein for the taxable year ended December 31, 1938, has been asserted in accordance with the provisions of section 293 (a) of the Revenue Act of 1938.

Adjustments to Net Income

Taxable Year Ended December 31, 1938

Net income as disclosed by return\$43,953.95

Additional income and unallowable deductions:

| | | |
|---|-----------|-----------|
| (a) Salary received | \$ 450.00 | |
| (b) Trust income | 3,003.66 | |
| (c) Rental income | 221.14 | |
| (d) Long-term capital loss disallowed | 11,516.00 | |
| (e) Interest disallowed | 769.70 | |
| (f) Taxes disallowed | 707.50 | |
| (g) Loss, oil venture, disallowed | 1,037.50 | |
| (h) Legal expense disallowed | 134.79 | 17,840.29 |

Net income adjusted\$61,794.24

Explanation of Adjustments

(a) You received compensation for personal services from The Times-Mirror Co., in the amount of \$41,550.00, of which your community half is \$20,775.00, whereas the community half reported in your return is \$20,325.00, an understatement of \$450.00.

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|-----------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1"..... | \$17,951.65 | \$17,627.44 | (\$324.21) |
| "Chandler Trust No. 2"..... | 8,118.59 | 11,446.46 | 3,327.87 |
| Total | <u>\$26,070.24</u> | <u>\$29,073.90</u> | <u>\$3,003.66</u> |

(c) The net rental income of \$557.72 reported in your return is increased \$221.14 by the disallowance of \$1,000.00 of the depreciation claimed and the apportionment of one-half of the \$1,557.72 corrected amount of net rental income to your wife's return. The real estate involved was owned by you and your wife as joint tenants.

Depreciation on the Nottingham residence is allowed at the rate of 5% per annum on a basis of \$15,000.00, or an allowance of \$750.00, in lieu of \$1,250.00 claimed, a disallowance of \$500.00. The depreciation of \$500.00 claimed on furniture in said residence is disallowed since the property was rented unfurnished and the furniture was not held for the production of income.

(d) Your claim for a deduction of \$11,516.00 as a long-term capital loss from the sale of 200 shares of Beverly Wilshire Investment Company stock is not allowable.

(e) One-half of the interest of \$1,539.41, paid on loans secured by real estate owned by you and your wife as joint tenants and claimed as a deduction in your return, is disallowed as being deductible by your wife.

(f) One-half of the taxes amounting to \$1,415.01, paid on real estate owned by you and your wife as joint tenants and claimed as a deduction in your return, is disallowed as being deductible by your wife.

(g) The loss of \$2,075.00 claimed under item 18 of your return on account of the R. L. Gilmore Oil Venture is a capital loss subject to the 50% limitation in section 117 of the Revenue Act of 1938.

(h) The legal expense of \$134.79 claimed as a deduction in your return is disallowed as representing a capital expenditure.

Computation of Alternative Tax

Taxable Year Ended December 31, 1938

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$61,794.24 |
| Plus: Net long-term capital loss | | 1,037.50 |
| Ordinary net income | | \$62,831.74 |
| Less: Personal exemption | \$ 2,500.00 | |
| Credit for dependents | 800.00 | 3,300.00 |
| Balance (surtax net income) | | \$59,531.74 |
| Less: Interest, item 5 of return | \$ 7.50 | |
| Earned income credit | 1,400.00 | 1,407.50 |
| Net income subject to normal tax | | \$58,124.24 |
| Normal tax at 4% on \$58,124.24 | \$ 2,324.97 | |
| Surtax on \$59,531.74 | 10,796.10 | |
| Partial tax | | \$13,121.07 |
| Minus: 30% of net long-term capital loss | | 311.25 |
| Alternative tax | | \$12,809.82 |

Computation of Tax

Taxable Year Ended December 31, 1938

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$61,794.24 |
| Less: Personal exemption | \$ 2,500.00 | |
| Credit for dependents | 800.00 | 3,300.00 |
| Balance (surtax net income) | | \$58,494.24 |
| Less: Interest, item 5 of return | \$ 7.50 | |
| Earned income credit | 1,400.00 | 1,407.50 |
| Net income subject to normal tax | | \$57,086.74 |
| Normal tax at 4% on \$57,086.74 | \$ 2,283.47 | |
| Surtax on \$58,494.24 | 10,432.98 | |
| Total | | \$12,716.45 |
| Alternative tax | | \$12,809.82 |
| Total income tax | | \$12,809.82 |
| Less: Income tax paid at source | | 12.00 |
| Correct income tax liability | | \$12,797.82 |
| Income tax assessed: | | |
| Original, account No. 832687 | | 6,936.38 |
| Deficiency of income tax | | \$ 5,861.44 |
| 5% penalty | | \$ 293.07 |

Adjustments to Net Income

Taxable Year Ended December 31, 1939

Net income as disclosed by return\$65,520.24

Additional income and unallowable deductions:

| | | |
|-------------------------------|-----------|----------|
| (a) Salary received | \$ 498.50 | |
| (b) Trust income | 3,686.76 | |
| (c) Rental income | 215.31 | |
| (d) Other income | 1,149.63 | |
| (e) Interest disallowed | 768.30 | |
| (f) Taxes disallowed | 902.98 | 7,221.48 |

Net income adjusted\$72,741.72

Explanation of Adjustments

(a) You received compensation for personal services from The Times-Mirror Co., in the amount of \$41,897.00, of which your community half is \$20,948.50, whereas the community half reported in your return is \$20,450.00, an understatement of \$498.50.

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|-----------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1"..... | \$21,560.46 | \$21,219.03 | (\$341.43) |
| "Chandler Trust No. 2"..... | 8,389.89 | 12,418.08 | 4,028.19 |
| Total | \$29,950.35 | \$33,637.11 | \$3,686.76 |

(c) The net rental income of \$569.38 reported in your return is increased \$215.31 by the disallowance of \$1,000.00 of the depreciation claimed and the apportionment of one-half of the \$1,569.38 corrected amount of net rental income to your wife's return. The reasons for these adjustments are as stated under adjustment (c) for the year 1938.

(d) The amount of \$1,149.63 received by you from The Times-Mirror Credit Union is held to represent income under the provisions of section 22(a) of the Internal Revenue Code.

(e) One-half of the interest of \$1,536.61, paid on loans secured by real estate owned by you and your wife as joint tenants and claimed as a deduction in your return, is disallowed as being deductible by your wife.

(f) One-half of the taxes amounting to \$1,805.96, paid on real estate owned by you and your wife as joint tenants and claimed as a deduction in your return, is disallowed as being deductible by your wife.

Computation of Tax

Taxable Year Ended December 31, 1939

| | | |
|--|-------------|-------------|
| Net income adjusted | \$72,741.72 | |
| Less: Personal exemption | \$ 2,500.00 | |
| Credit for dependents | 800.00 | 3,300.00 |
| Balance (surtax net income) | | \$69,441.72 |
| Less: Earned income credit | | 1,400.00 |
| Net income subject to normal tax | | \$68,041.72 |
| Normal tax at 4% on \$68,041.72 | \$ 2,721.67 | |
| Surtax on \$69,441.72 | 14,619.94 | |
| Total income tax | | \$17,341.61 |
| Less: Income tax paid at source | | 12.00 |
| Correct income tax liability | | \$17,329.61 |
| Income tax assessed: | | |
| Original, account No. 203298 | | 14,166.70 |
| Deficiency of income tax | | \$ 3,162.91 |

Adjustments to Net Income

Taxable Year Ended December 31, 1940

| | | |
|---|-------------|-------------|
| Net income as disclosed by return | \$61,018.66 | |
| Additional income and unallowable deductions: | | |
| (a) Dividends received | \$1,039.92 | |
| (b) Trust income | 3,690.40 | |
| (c) Rental income | 581.73 | |
| (d) Long-term capital loss disallowed | 1,249.88 | |
| (e) Interest disallowed | 693.46 | |
| (f) Taxes disallowed | 905.20 | |
| (g) Bad debts disallowed | 240.00 | 8,400.59 |
| Net income adjusted | | \$69,419.25 |

Explanation of Adjustments

(a) The amount of dividends reported in your return is understated \$1,039.92 due to the erroneous apportionment to your wife's return of \$963.17 dividends received on stocks owned by you as your separate property, and to the omission of \$75.00 dividends received from Pacific Pipe and Supply Company and \$1.75 dividends received from General Electric Company.

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount reported in your return | Amount determined taxable to you | Addition to income (reduction) |
|-----------------------------|-----------------------------------|-------------------------------------|--------------------------------------|
| "Chandler Trust No. 1"..... | \$23,314.75 | \$22,977.42 | (\$337.33) |
| "Chandler Trust No. 2"..... | 9,385.93 | 13,413.66 | 4,027.73 |
| Total | \$32,700.68 | \$36,391.08 | \$3,690.40 |

(c) The net rental loss of \$163.46 claimed in your return is adjusted to net rental income of \$418.27 by the disallowance of \$1,000.00 of the depreciation claimed and the apportionment of one-half of the \$836.54 corrected amount of net rental income to your wife's return. The reasons for these adjustments are as stated under adjustment (c) for the year 1938.

(d) Your claim for a deduction of \$1,249.88 as a long-term capital loss from the sale of 5 shares of Warner Electric Brake stock is not allowable.

(e) One-half of the interest of \$1,386.92, paid on loans secured by real estate owned by you and your wife as joint tenants and claimed as a deduction in your return, is disallowed as being deductible by your wife.

(f) One-half of the taxes amounting to \$1,810.41, paid on real estate owned by you and your wife as joint tenants and claimed as a deduction in your return, is disallowed as being deductible by your wife.

(g) The deduction claimed in your return for bad debts of Talbot, \$50.00, and Ferguson, \$190.00, are disallowed because these do not represent debts which became worthless within the taxable year.

Computation of Alternative Tax

Taxable Year Ended December 31, 1940

| | | |
|--|-------------|----------|
| Net income adjusted | \$69,419.25 | |
| Plus: Net long-term capital loss | 5,875.62 | |
| Ordinary net income | \$75,294.87 | |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependents | 800.00 | 2,800.00 |
| Balance (surtax net income) | \$72,494.87 | |
| Less: Earned income credit | 1,400.00 | |
| Net income subject to normal tax | \$71,094.87 | |
| Normal tax at 4% on \$71,094.87 | \$ 2,843.80 | |
| Surtax on \$72,494.87 | 22,127.44 | |
| Partial tax | \$24,971.24 | |
| Minus: 30% of net long-term capital loss | 1,762.68 | |
| Alternative tax | \$23,208.56 | |

Computation of Tax

Taxable Year Ended December 31, 1940

| | | |
|--|-------------|----------|
| Net income adjusted | \$69,419.25 | |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependents | 800.00 | 2,800.00 |
| Balance (surtax net income) | \$66,619.25 | |
| Less: Earned income credit | 1,400.00 | |
| Net income subject to normal tax | \$65,219.25 | |
| Normal tax at 4% on \$65,219.25 | \$ 2,608.77 | |
| Surtax on \$66,619.25 | 19,291.05 | |
| Total normal tax and surtax | \$21,899.82 | |
| Alternative tax | \$23,208.56 | |
| Defense tax (10% of \$23,208.56) | 2,320.85 | |
| Total income tax | \$25,529.41 | |
| Less: Income tax paid at source | 12.00 | |
| Correct income tax liability | \$25,517.41 | |
| Income tax assessed: | | |
| Original, account No. 203180 | 21,011.07 | |
| Deficiency of income tax | \$ 4,506.34 | |

Adjustments to Net Income

Taxable Year Ended December 31, 1941

Net income as disclosed by return\$101,145.87

Additional income and unallowable deductions:

| | | |
|-------------------------------|----------|-----------|
| (a) Salary received | \$ 96.62 | |
| (b) Dividends received | 9,218.38 | |
| (c) Rental income | 933.06 | |
| (d) Trust income | 1,702.23 | |
| (e) Interest disallowed | 543.99 | |
| (f) Taxes disallowed | 887.95 | |
| (g) Loss disallowed | 535.00 | 13,917.23 |

Net income adjusted\$115,063.10

Explanation of Adjustments

(a) You received compensation for personal services from The Times-Mirror Co., in the amount of \$47,174.17, of which your community half is \$23,587.09, whereas the community half reported in your return is \$23,490.47, an understatement of \$96.62.

(b) The amount of dividends reported in your return is understated \$9,218.38 due to the erroneous apportionment to your wife's return of \$9,180.88 dividends received on stocks owned by you as your separate property, and to the omission of \$37.50 dividends received from Pacific Pipe and Supply Company.

(c) The net rental loss of \$866.12 claimed in your return is adjusted to net rental income of \$66.94 by the disallowance of \$1,000.00 of the depreciation claimed and the apportionment of one-half of the \$133.88 corrected amount of net rental income to your wife's return. The reasons for these adjustments are stated under adjustment (c) for the year 1938.

(d) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount reported in your return | Amount determined taxable to you | Addition to income (reduction) |
|-----------------------------|-----------------------------------|-------------------------------------|--------------------------------------|
| "Chandler Trust No. 1"..... | \$23,311.10 | \$22,977.17 | (\$333.93) |
| "Chandler Trust No. 2"..... | 10,527.69 | 12,563.85 | 2,036.16 |
| Total | \$33,838.79 | \$35,541.02 | \$1,702.23 |

(e) One-half of the interest of \$1,087.98, paid on loans secured by real estate owned by you and your wife as joint tenants and claimed as a deduction in your return, is disallowed as being deductible by your wife.

(f) One-half of the taxes amounting to \$1,775.90, paid on real estate owned by you and your wife as joint tenants and claimed as a deduction in your return, is disallowed as being deductible by your wife.

(g) The loss of \$535.00 claimed in your return on account of destruction of one oak tree and two locust trees by storm is disallowed since the amount of loss sustained, if any, has not been substantiated.

Computation of Alternative Tax

Taxable Year Ended December 31, 1941

| | |
|---|----------------------|
| Net income adjusted | \$115,063.10 |
| Minus: Net long-term capital gain | 17,003.90 |
| Ordinary net income | \$ 98,059.20 |
| Less: Personal exemption | \$ 1,500.00 |
| Credit for dependents | 800.00 2,300.00 |
| Balance (surtax net income) | \$ 95,759.20 |
| Less: Earned income credit | 1,400.00 |
| Net income subject to normal tax | \$ 94,359.20 |
| Normal tax at 4% on \$94,359.20 | \$ 3,774.37 |
| Surtax on \$95,759.20 | 47,065.89 |
| Partial tax | \$ 50,840.26 |
| Plus: 30% of net long-term capital gain | 5,101.17 |
| Alternative tax | \$ 55,941.43 |

Computation of Tax

Taxable Year Ended December 31, 1941

| | | |
|--|-------------|--------------|
| Net income adjusted | | \$115,063.10 |
| Less: Personal exemption | \$ 1,500.00 | |
| Credit for dependents | 800.00 | 2,300.00 |
| | | <hr/> |
| Balance (surtax net income) | | \$112,763.10 |
| Less: Earned income credit | | 1,400.00 |
| | | <hr/> |
| Net income subject to normal tax | | \$111,363.10 |
| Normal tax at 4% on \$111,363.10 | \$ 4,454.52 | |
| Surtax on \$112,763.10 | 58,076.02 | |
| | | <hr/> |
| Total | | \$ 62,530.54 |
| Alternative tax | | \$ 55,941.43 |
| Total income tax | | \$ 55,941.43 |
| Less: Income tax paid at source | | 13.80 |
| | | <hr/> |
| Correct income tax liability | | \$ 55,927.63 |
| Income tax assessed: | | |
| Original | | 46,545.49 |
| | | <hr/> |
| Deficiency of income tax | | \$ 9,382.14 |

Received and filed Sept. 27, 1943, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 3037

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I and II. Admits the allegations contained in paragraphs I and II of the petition.

III. Admits that the taxes in controversy are income taxes for the calendar years 1938 to 1941, inclusive, but denies that the total of the proposed deficiencies aggregating \$23,205.90 is in controversy.

IV. (1) to (5), inclusive. Denies that the respondent erred as alleged in subparagraphs (1) to (5), inclusive, of paragraph IV of the petition.

V. (1) and (2). Admits the allegations contained in subparagraphs (1) and (2) of paragraph V of the petition.

(3). Admits that petitioner in his income tax return for the year 1938 reported \$8,118.59 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$11,446.46 and accordingly increased net taxable income reported by petitioner by the sum of \$3,327.87. Denies that the respondent's determination is erroneous and denies the

remaining allegations contained in subparagraph (3) of paragraph V of the petition.

(4). Admits that petitioner in his income tax return for the year 1939 reported \$8,389.89 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$12,418.08 and accordingly increased net taxable income reported by petitioner by the sum of \$4,028.19. Denies that the respondent's determination is erroneous and denies the remaining allegations contained in subparagraph (4) of paragraph V of the petition.

(5). Admits that petitioner in his income tax return for the year 1940 reported \$9,385.93 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$13,413.66 and accordingly increased net taxable income reported by petitioner by the sum of \$4,027.73. Denies that the respondent's determination is erroneous and denies the remaining allegations contained in subparagraph (5) of paragraph V of the petition.

(6). Admits that petitioner in his income tax return for the year 1941 reported \$10,527.69 as income from Trust No. 2. Admits that respondent determined that the amount reportable by petitioner from said source was \$12,563.85 and accordingly increased net taxable income reported by petitioner by the sum of \$2,036.16. Denies that the respondent's determination is erroneous and denies the

remaining allegations contained in subparagraph (6) of paragraph V of the petition.

(7). Denies the allegations contained in subparagraph (7) of paragraph V of the petition.

VI. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
Chief Counsel,
Bureau of Internal
Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

HAROLD D. THOMAS,
Special Attorney,
Bureau of Internal
Revenue.

Received and filed Nov. 17, 1943 T. C. U. S.

The Tax Court of the United States
Washington

Docket No. 3037

NORMAN CHANDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Opinion of this Court, promulgated May 23, 1949, it is

Ordered and decided: That there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$4,529.52, \$918.09, \$1,218.56, and \$1,840.23, and that there is no penalty liability for the calendar year 1938 under section 293 (a), Revenue Act of 1938.

/s/ WILLIAM W. ARNOLD,
Judge.

Entered May 24, 1949.

Served May 25, 1949.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 3037

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

NORMAN CHANDLER,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on November 30, 1949 "That there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$4,592.52, \$918.09, \$1,218.56, and \$1,840.23" in respect of the Federal income tax liability of Norman Chandler, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Norman Chandler, is a resident of Sierra Madre, California, and filed his Federal income tax returns for the years 1938, 1939, 1940 and 1941 with the Collector of Internal Revenue for the Sixth District of California, whose office is in Los Angeles, California, and within the juris-

diction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought.

NATURE OF CONTROVERSY

The issue presented to and passed upon by The Tax Court of the United States and which was decided contrary to the Commissioner's determination is whether certain taxable stock dividends which were received by Chandler Trust No. 2, of which trust the respondent on review was one of the life tenant trustors, are taxable to the life tenant trustors of the trust, as determined by the Commissioner, or, as claimed by the taxpayer, to the trust itself. The Tax Court held, contrary to the Commissioner's determination, that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable and that the stock dividends in question are taxable to the trust rather than to the life tenant beneficiaries and trustors. The Commissioner's determination in this and related cases was thus disapproved in so far as it reflected the Commissioner's inclusion of an allocate portion of the taxable stock dividends in the taxable income of each of the life tenant trustors for the years here involved.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for the Petitioner on Review.

Received and filed Feb. 17, 1950, U. S. C. A.

[Title of Court of Appeals and Cause.]

Docket No. 3037.

STATEMENT OF POINTS

Comes now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In ordering and deciding that there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of only \$4,592.52, \$918.09, \$1,218.56, and \$1,840.23.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner, as modified by the stipulation of the parties, on the basis that the stock dividends received by the Chandler Trust No. 2 were taxable to the life tenant trustors.

3. In holding that the Chandler Trust No. 2 was, for Federal income tax purposes, a valid trust under the laws of California.

4. In failing and refusing to hold and decide that the Chandler Trust No. 2 was, by virtue of the rights of amendment or modification reserved by the

trustors, not a valid trust for Federal income tax purposes and that, accordingly, the taxable stock dividends received by the trust during the taxable years were taxable to the life tenant trustors under Sections 22(a) and/or Sections 166 and 167 of the Revenue Act of 1938 and the Internal Revenue Code, rather than to the trust itself.

5. In holding that Sections 22 (a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable.

6. In denying the Commissioner's motion to reconsider and set aside the Court's findings of fact and opinion.

7. In that its opinion and decision are contrary to the facts as stipulated by the parties.

8. In that its opinion and its decision are contrary to law and the Commissioner' regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of service attached.

Received and filed May 4, 1950 U. S. C. A.

The Tax Court of the United States

Docket No. 3038

PHILIP CHANDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PB) dated June 30, 1943, and as a basis of this proceeding alleges as follows:

I.

Petitioner is an individual residing at 2531 North Catalina Street, Los Angeles, California. The returns for the period here involved were filed with the Collector for the Sixth District of California.

II.

The notice of deficiency, a copy of which is attached hereto, marked "Exhibit A" and made a part hereof, was mailed to the petitioner on June 30, 1943.

III.

The taxes in controversy are income taxes for the

calendar years 1938 to 1941, inclusive, totaling \$7025.11.

IV.

The determination of the taxes set for in said notice of deficiency is based upon the following errors:

(1) Respondent erred in determining deficiencies in income tax for the years 1938 to 1941, inclusive, in the total sum of \$7025.11.

(2) Respondent erred in adding to petitioner's net taxable income for the year 1938 the sum of \$5642.73.

(3) Respondent erred in adding to petitioner's net taxable income for the year 1939 the sum of \$6758.15.

(4) Respondent erred in adding to petitioner's net taxable income for the year 1940 the sum of \$4692.34.

(5) Respondent erred in adding to petitioner's net taxable income for the year 1941 the sum of \$4129.34.

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

(1) Petitioner is a resident of the County of Los Angeles, State of California, and as such filed his income tax returns for each of the years herein

involved with the Collector of Internal Revenue for the Sixth Collection District of California.

(2) Petitioner during the years herein involved was a beneficiary under that certain trust designated Trust No. 2, wherein Marian Otis Chandler, May C. Goodan, Constance Chandler (Constance Chandler Crowe), Ruth C. Williamson, Norman Chandler, Harrison G. O. Chandler, Helen C. Garland, and Philip Chandler are designated "present trustees."

(3) Petitioner, as beneficiary, during the year 1938 received as his full and complete share of the distributive net income of said Trust No. 2 the sum of \$8118.57, which he reported in his income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1938 was the sum of \$11,446.46, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$3327.89. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(4) Petitioner, as beneficiary, during the year 1939 received as his full and complete share of the distributive net income of said Trust No. 2 the sum of \$8726.32, which he reported in his income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1939 was the sum of \$12,-

418.08, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$3,-691.76. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(5) Petitioner, as beneficiary, during the year 1940 received as his full and complete share of the distributive net income of said Trust No. 2 the sum of \$9385.93, which he reported in his income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1940 was the sum of \$13,413.66, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4027.73. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(6) Petitioner, as beneficiary, during the year 1941 received as his full and complete share of the distributive net income of said Trust No. 2 the sum of \$10,527.69, which he reported in his income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1941 was the sum of \$12,563.85, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$2,306.16. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(7) Respondent, under date of June 30, 1943, issued a notice of deficiency determining that said Trust No. 2 was an association taxable as a corporation. Under date of June 30, 1943, respondent issued a notice of deficiency determining that Trust No. 1, wherein Harry Chandler, Norman Chandler, and Marian Otis Chandler are designated "present trustees" and petitioner and others are designated "beneficiaries," was an association taxable as a corporation. Petitioner is informed and believes and therefore alleges that the trustees of each of the aforementioned trusts have filed or will file a petition to The United States Tax Court for a redetermination of the deficiencies set forth in said notices, and that the actions of the respondent in determining said trusts to be associations taxable as corporations and in determining the deficiencies herein involved are inconsistent, erroneous, and illegal.

Wherefore, petitioner prays that The Tax Court of the United States hear this petition and redetermine the aforesaid deficiencies in accordance with the rights of the petitioner in the premises and grant any and all refund that may be due as a result of such redetermination.

Dated September 20, 1943.

/s/ A. CALDER MACKAY,

/s/ ARTHUR McGREGOR,

/s/ HOWARD W. REYNOLDS,

Counsel for Petitioner.

State of California

County of Los Angeles—ss.

Philip Chandler, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ PHILIP CHANDLER.

Subscribed and sworn to before me this 23rd day of September, 1943.

[Seal] /s/ MARY E. WHITTHORNE,
Notary Public in and for said County and State.

My commision expires November 26, 1945.

EXHIBIT A

Form 1279

Treasury Department

Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

June 30, 1943

Office of
Internal Revenue Agent in Charge
Los Angeles Division
LA:IT:90D:PB

Mr. Philip Chandler,
2531 North Catalina Street,
Los Angeles, California

Sir:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1938 to 1941 inclusive discloses a deficiency of \$7,025.11 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C.,

for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner,

By GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form of waiver.

Statement

LA:IT:90D:PB

Mr. Philip Chandler,
2531 North Catalina Street,
Los Angeles, California.

Tax Liability for the Taxable Years Ended
December 31, 1938, to 1941, Inclusive

Income Tax

| Year | Liability | Assessed | Deficiency |
|------------|-------------|-------------|------------|
| 1938..... | \$ 4,025.74 | \$ 2,762.09 | \$1,263.65 |
| 1939..... | 5,624.53 | 4,047.30 | 1,577.23 |
| 1940..... | 11,189.99 | 9,256.84 | 1,933.15 |
| 1941..... | 19,839.03 | 17,587.95 | 2,251.08 |
| Total..... | \$40,679.29 | \$33,654.18 | \$7,025.11 |

This determination of your income tax liability has been made upon the basis of information on file in this office.

If you do not acquiesce in all of the adjustments making up the deficiency indicated, but desire to stop the accumulation of interest on that part of the deficiency resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amount of the deficiency you desire to have assessed at once. The execution of the form for the agreed portion of the deficiency will not deprive you of your right to petition The Tax Court of the United States for a redetermination of the deficiency.

Adjustments to Net Income

Taxable Year Ended December 31, 1938

| | | |
|---|-------------|-------------|
| Net income as disclosed by return | \$26,874.34 | |
| Additional income and unallowable deductions: | | |
| (a) Trust income | \$ 3,003.67 | |
| (b) Long-term capital losses | 2,639.06 | 5,642.73 |
| Net income adjusted | | \$32,517.07 |

Explanation of Adjustments

(a) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|-----------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1"..... | \$17,951.66 | \$17,627.44 | \$(324.22) |
| "Chandler Trust No. 2"..... | 8,118.57 | 11,446.46 | 3,327.89 |
| Total | \$26,070.23 | \$29,073.90 | \$3,003.67 |

(b) The following long-term capital losses claimed in your return are disallowed for lack of substantiation of basis of the securities sold:

| | |
|--|-----------|
| Los Angeles Improvement No. 112 | \$ 500.00 |
| San Luis Obispo Road Improvement No. 12 | 1,600.00 |

Total\$2,100.00

In lieu of the long-term capital loss of \$395.85 claimed from the sale of Trustees Standard Oil Shares "B" for \$820.80, there is determined a long-term capital gain of \$143.21 from such sale, resulting in an adjustment of \$539.06.

These adjustments result in the addition to income of the amount of \$2,639.06.

Computation of Tax

Taxable Year Ended December 31, 1938

| | |
|--|-----------------|
| Net income adjusted | \$32,517.07 |
| Less: Personal exemption | \$ 2,500.00 |
| Credit for dependents | 633.33 3,133.33 |
| Balance (surtax net income) | \$29,383.74 |
| Less: Interest on U.S. obligations | \$ 12.90 |
| Earned income credit | 300.00 312.90 |
| Net income subject to normal tax | \$29,070.84 |
| Normal tax at 4% on \$29,070.84 | \$ 1,162.83 |
| Surtax on \$29,384.74 | 2,882.91 |
| Total income tax | \$ 4,045.74 |
| Less: Income tax paid at source | 20.00 |
| Correct income tax liability | \$ 4,025.74 |
| Income tax assessed: | |
| Original, account No. 203934 | 2,762.09 |
| Deficiency of income tax | \$ 1,263.65 |

Adjustments to Net Income

Taxable Year Ended December 31, 1939

| | | |
|---|-------------|-------------|
| Net income as disclosed by return | \$32,806.73 | |
| Additional income and unallowable deductions: | | |
| (a) Dividends received | \$ 195.00 | |
| (b) Interest received | 256.17 | |
| (c) Trust income | 3,350.33 | |
| (d) Long-term capital losses | 2,956.65 | 6,758.15 |
| Total | | \$39,564.88 |
| Additional deduction: | | |
| (e) Interest paid | | 249.74 |
| Net income adjusted | | \$39,315.14 |

Explanation of Adjustments

(a) The following dividends received are added to income:

| | |
|---------------------------------------|----------|
| American Aviation Company | \$ 25.00 |
| Union Oil Company of California | 20.00 |
| Manhattan Company | 25.00 |
| Chrysler Corporation | 125.00 |
| Total | \$195.00 |

(b) The following interest received is added to income:

| | |
|-------------------------------------|----------|
| Indiana Service Corporation | \$125.00 |
| Interstate Power Company | 75.00 |
| Foreman and Clark | 4.17 |
| Mortgage Guarantee Co. | 8.94 |
| New England Gas & Electric Co. | 43.06 |
| Total | \$256.17 |

(c) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$21,560.46 | \$21,219.03 | \$(341.43) |
| "Chandler Trust No. 2" | 8,726.32 | 12,418.08 | 3,691.76 |
| Total | \$30,286.78 | \$33,637.11 | \$3,350.33 |

(d) The following long-term capital losses claimed in your return are disallowed for lack of substantiation of the basis of the securities sold:

| | |
|---|-------------------|
| Foreman & Clark bonds | \$1,450.00 |
| Girls Collegiate School First Mortgage bonds | 197.50 |
| Mortgage Guarantee Certificate | 209.82 |
| New England Gas & Electric Co. bonds | 833.40 |
| Total | <u>\$2,690.72</u> |

The long-term capital loss of \$506.25 claimed in your return on account of worthlessness of Discount Corp. of California (3 units) acquired by you in 1932, is disallowed because the stock did not become worthless during the taxable year and no loss was sustained with respect thereto during the taxable year, and for the further reason that the basis of the stock has not been substantiated.

In lieu of the short-term capital loss of \$2,591.30 claimed from the sale of 100 shares of State Street Investment Corporation stock (not taken into deductions claimed in determining net income for this taxable year), gains and losses from said sale are determined as follows, the loss of \$240.32 being applied against the additions to income mentioned under this adjustment:

| No. of shares | Date acquired | Cost | Sale price | Gain (loss) | Gain (loss) taken into account | |
|---|------------------|------------|---------------|----------------|-----------------------------------|------------|
| | | | | | Percentage | Amount |
| 25 | 9/21/34..... | \$1,592.25 | \$1,652.18 | \$ 59.93 | 50 | \$ 29.97 |
| 14 | 1/ 4/37..... | 1,465.80 | 925.22 | (540.58) | 50 | (270.29) |
| Net long-term capital loss from sale of 39 shares | | | | | | \$(240.32) |
| 61 | 10/ 1/37..... | \$5,612.00 | \$4,031.30 | (1,580.70) | 100 | (1,580.70) |

These adjustments result in the addition to income of the net amount of \$2,956.65.

(e) An additional deduction for interest is allowed in the amount of \$249.74.

Computation of Tax

Taxable Year Ended December 31, 1939

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$39,315.14 |
| Less: Personal exemption | \$ 2,500.00 | |
| Credit for dependents | 800.00 | 3,300.00 |
| | | <hr/> |
| Balance (surtax net income) | | \$36,015.14 |
| Less: Earned income credit | | 360.00 |
| | | <hr/> |
| Net income subject to normal tax | | \$35,655.14 |
| Normal tax at 4% on \$35,655.14 | \$ 1,426.20 | |
| Surtax on \$36,015.14 | 4,223.18 | |
| | | <hr/> |
| Total income tax | | \$ 5,649.38 |
| Less: Income tax paid at source | | 24.85 |
| | | <hr/> |
| Correct income tax liability | | \$ 5,624.53 |
| Income tax assessed: | | |
| Original, account No. 203029 | | 4,047.30 |
| | | <hr/> |
| Deficiency of income tax | | \$ 1,577.23 |

Adjustments to Net Income

Taxable Year Ended December 31, 1940

| | | |
|---|----------|-------------|
| Net income as disclosed by return | | \$39,978.93 |
| Additional income and unallowable deductions: | | |
| (a) Interest received | \$ 97.63 | |
| (b) Trust income | 3,690.41 | |
| (c) Short-term capital gain | 236.33 | |
| (d) Long-term capital gain | 667.97 | 4,692.34 |
| | | <hr/> |
| Total | | \$44,671.27 |
| Additional deduction: | | |
| (e) Interest paid | | 97.92 |
| | | <hr/> |
| Net income adjusted | | \$44,573.35 |

Explanation of Adjustments

(a) The following interest received is added to income :

| | |
|-----------------------------------|---------|
| Interstate Power Company | \$36.66 |
| Indiana Service Corporation | 60.97 |

Total\$97.63

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|-----------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1"..... | \$23,314.74 | \$22,977.42 | \$(337.32) |
| "Chandler Trust No. 2"..... | 9,385.93 | 13,413.66 | 4,027.73 |
| Total | \$32,700.67 | \$36,391.08 | \$3,690.41 |

(c) The net short-term capital gain reported in your return is increased \$236.33, as follows:

| Item | Short-term capital gain (loss) reported | Short-term capital gain (loss) corrected | Addition to income (reduction) |
|-------------------------------------|--|---|--------------------------------------|
| 1. Illinois Iowa Power Co. | \$ 716.81 | \$ 0.00 | \$(716.81) |
| 2. Interstate Power Co. | (94.66) | (35.08) | 59.58 |
| 3. Indiana Service Corp. | (134.93) | (16.18) | 118.75 |
| 4. Portland Gas & Coke Co. | 163.38 | 203.66 | 40.28 |
| 5. State Street Investment Corp.... | (2,591.30) | (1,580.70) | 1,010.60 |
| 6. Dunningcolor Corp. | 0.00 | 44.80 | 44.80 |
| 7. Pure Oil Co. | 0.00 | (320.87) | (320.87) |
| Net addition | | | \$ 236.33 |

1. In lieu of the short-term capital gain of \$716.81 reported from the sale of 100 shares of Illinois Iowa Power Co. stock, a long-term capital gain from the sale thereof has been determined in the amount of \$599.45, as follows:

| No. of shares | Date acquired | Date sold | Cost | Sale price | Gain | Gain taken into account Percent. | Amt. |
|------------------|------------------|--------------|------------|---------------|----------|--|----------|
| 50 | 12/16/38 | 11/27/40.. | \$964.40 | \$1,408.67 | \$444.27 | 66 $\frac{2}{3}$ | \$296.18 |
| 50 | 12/16/38 | 11/28/40.. | 964.40 | 1,419.30 | 454.90 | 66 $\frac{2}{3}$ | 303.27 |
| Total | | | \$1,928.80 | \$2,827.97 | \$899.17 | | \$599.45 |

2. The cost of \$3,000.00 of bonds of Interstate Power Co. has been determined as \$1,943.83, in lieu of \$2,003.41 claimed in your return, a difference of \$59.58.

3. The cost of \$5,000.00 of bonds of Indiana Service Corp. has been determined as \$3,169.25, in lieu of \$3,288.00 claimed in your return, a difference of \$118.75.

4. The cost of \$2,000.00 of bonds of Portland Gas & Coke Co. has been determined as \$1,608.42, in lieu of \$1,648.70 claimed in your return, a difference of \$40.28.

5. As a result of the sale in the preceding year of 100 shares of State Street Investment Corporation stock there is added to the net short-term capital loss carry-over from that year the amount of \$1,580.70 as shown under adjustment (d) for the preceding year.

6. You failed to include in the net short-term capital loss carry-over a gain of \$44.80 from the sale on June 5, 1939 of 300 shares of Dunningcolor Corporation stock for \$344.88, acquired May 18, 1939, for \$300.00.

7. You failed to include in the net short-term capital loss carry-over a loss of \$320.87 from the sale on March 3, 1939, of 100 shares of Pure Oil Company stock for \$921.93, acquired October 13, 1937, for \$1,242.80.

(d) The addition to income of \$667.97 results from the following adjustments:

| | |
|--|-----------------|
| 1. Illinois Iowa Power Co. | \$599.45 |
| 2. Loss, Central Investment Co. bonds, disallowed | 50.00 |
| 3. Adjustment of loss, Celanese Corp. of America | 18.52 |
| Total | <u>\$667.97</u> |

1. See adjustment (c) 1. for this year.

2. The loss of \$50.00 claimed from the sale of \$2,000.00 of bonds of Central Investment Company acquired by you in 1932 is disallowed for lack of substantiation of the basis of the securities sold.

3. Due to an overstatement of \$37.04 in the cost claimed of 50 shares of Celanese Corp. of America stock a long-term capital gain of \$7.00 is determined from the sale, in lieu of the long-term capital loss of \$11.52 claimed in your return, a difference of \$18.52.

(e) An additional deduction for interest is allowed in the amount of \$97.92.

Computation of Alternative Tax

Taxable Year Ended December 31, 1940

| | | |
|---|-------------|--------------------|
| Net income adjusted | | \$44,573.35 |
| Minus: Net long-term capital gain | | 298.93 |
| Ordinary net income | | <u>\$44,274.42</u> |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependents | 800.00 | 2,800.00 |
| Balance (surtax net income) | | <u>\$41,474.42</u> |
| Less: Earned income credit | | 422.50 |
| Net income subject to normal tax | | <u>\$41,051.92</u> |
| Normal tax at 4% on \$41,051.92 | \$ 1,642.08 | |
| Surtax on \$41,474.42 | 8,470.79 | |
| Partial tax | | <u>\$10,112.87</u> |
| Plus: 30% of net long-term capital gain | | 89.68 |
| Alternative tax | | <u>\$10,202.55</u> |

Computation of Tax

Taxable Year Ended December 31, 1940

| | | |
|--|-------------|--------------------|
| Net income adjusted | | \$44,573.35 |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependents | 800.00 | 2,800.00 |
| Balance (surtax net income) | | <u>\$41,773.35</u> |
| Less: Earned income credit | | 422.50 |
| Net income subject to normal tax | | <u>\$41,350.85</u> |
| Normal tax at 4% on \$41,350.85 | \$ 1,654.03 | |
| Surtax on \$41,773.35 | 8,578.41 | |
| Total | | <u>\$10,232.44</u> |
| Alternative tax | | \$10,202.55 |
| Defense tax (10% of \$10,202.55) | | 1,020.25 |
| Total income tax | | <u>\$11,222.80</u> |
| Less: Income tax paid at source | | 32.81 |
| Correct income tax liability | | <u>\$11,189.99</u> |
| Income tax assessed: | | |
| Original, account No. 203488 | | 9,256.84 |
| Deficiency of income tax | | <u>\$ 1,933.15</u> |

Adjustments to Net Income

Taxable Year Ended December 31, 1941

| | |
|---|-----------------|
| Net income as disclosed by return | \$46,641.06 |
| Additional income and unallowable deductions: | |
| (a) Dividends received | \$ 1,769.45 |
| (b) Short-term capital gain | 97.92 |
| (c) Long-term capital gain | 559.74 |
| (d) Trust income | 1,702.23 |
| | <u>4,129.34</u> |
| Net income adjusted | \$50,770.40 |

Explanation of Adjustments

(a) You failed to report a dividend received from Chandis Securities Company in the amount of \$1,769.45.

(b) The short-term capital gain from the sale of St. Louis Public Service bonds is increased \$97.92 due to an overstatement of cost in that amount.

(c) The long-term capital loss of \$123.00 claimed in your return from the sale of bonds of Central Investment Company is disallowed for lack of substantiation of the basis of the securities sold.

In lieu of the long-term capital gain of \$1,946.40 reported from the sale of 300 shares of Illinois Iowa Power preferred stock, there is determined long-term capital gain of \$2,018.98 from such sale (an addition of \$72.58), as follows:

| No. of shares | Date acquired | Cost | Sale price | Gain (loss) | Gain (loss) taken into account | |
|------------------|------------------|------------|---------------|----------------|-----------------------------------|-------------------|
| | | | | | Percentage | Amount |
| 50 | 2/ 2/39..... | \$1,130.86 | \$1,552.79 | \$421.93 | 50 | \$ 210.97 |
| 50 | 5/ 9/39..... | 898.30 | 1,552.79 | 654.49 | 66 $\frac{2}{3}$ | 436.33 |
| 50 | 5/ 9/39..... | 898.30 | 1,533.70 | 635.40 | 66 $\frac{2}{3}$ | 423.61 |
| 50 | 6/ 6/39..... | 1,030.42 | 1,533.70 | 503.28 | 66 $\frac{2}{3}$ | 335.52 |
| 100 | 8/17/39..... | 2,161.08 | 3,079.90 | 918.82 | 66 $\frac{2}{3}$ | 612.55 |
| Total | | | | | | <u>\$2,018.98</u> |

In lieu of the long-term capital gain of \$98.56 reported from the sale of 500 shares of Richfield Oil Co. stock, there is determined long-term capital gain of \$462.72 from such sale (an addition of \$364.16), as follows:

| No. of shares | Date acquired | Cost | Sale price | Gain (loss) | Gain (loss) taken into account | |
|------------------|------------------|------------|---------------|----------------|-----------------------------------|----------|
| | | | | | Percentage | Amount |
| 63 | 3/20/37..... | \$ 752.06 | | | | |
| 2 | 6/ 5/37..... | 19.62 | | | | |
| 35 | 12/17/38..... | 320.58 | | | | |
| 100 | 1/ 4/39..... | 933.06 | | | | |
| <hr/> | | | | | | |
| 200 | Total | \$2,025.32 | \$2,250.45 | \$225.13 | 50 | \$112.57 |
| 100 | 1/ 4/39..... | 933.06 | 1,174.97 | 241.91 | 50 | 120.95 |
| 200 | 2/ 2/39..... | 1,891.55 | 2,349.95 | 458.40 | 50 | 229.20 |
| <hr/> | | | | | | |
| Total | | | | | | \$462.72 |

These adjustments result in the addition to income of \$559.74.

(d) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|-----------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1"..... | \$23,311.10 | \$22,977.17 | \$(333.93) |
| "Chandler Trust No. 2"..... | 10,527.69 | 12,563.85 | 2,036.16 |
| <hr/> | | | |
| Total | \$33,838.79 | \$35,541.02 | \$1,702.23 |

Computation of Alternative Tax

Taxable Year Ended December 31, 1941

| | |
|---|--------------------|
| Net income adjusted | \$50,770.40 |
| Minus: Net long-term capital gain | 2,046.70 |
| <hr/> | |
| Ordinary net income | \$48,723.70 |
| Less: Personal exemption | \$ 1,500.00 |
| Credit for dependents | 800.00 2,300.00 |
| <hr/> | |
| Balance (surtax net income) | \$46,423.70 |
| Less: Earned income credit | 542.50 |
| <hr/> | |
| Net income subject to normal tax | \$45,881.20 |
| Normal tax at 4% on \$45,881.20 | \$ 1,835.25 |
| Surtax on \$46,423.70 | 17,413.04 |
| <hr/> | |
| Partial tax | \$19,248.29 |
| Plus: 30% of net long-term capital gain | 614.01 |
| <hr/> | |
| Alternative tax | \$19,862.30 |

Computation of Tax

Taxable Year Ended December 31, 1941

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$50,770.40 |
| Less: Personal exemption | \$ 1,500.00 | |
| Credit for dependents | 800.00 | 2,300.00 |
| | | <hr/> |
| Balance (surtax net income) | | \$48,470.40 |
| Less: Earned income credit | | 542.50 |
| | | <hr/> |
| Net income subject to normal tax | | \$47,927.90 |
| Normal tax at 4% on \$47,927.90 | \$ 1,917.12 | |
| Surtax on \$48,470.40 | 18,538.72 | |
| | | <hr/> |
| Total | | \$20,455.84 |
| Alternative tax | | \$19,862.30 |
| Total income tax | | \$19,862.30 |
| Less: Income tax paid at source | | 23.27 |
| | | <hr/> |
| Correct income tax liability | | \$19,839.03 |
| Income tax assessed: | | |
| Original, account No. 312448 | | 17,587.95 |
| | | <hr/> |
| Deficiency of income tax | | \$ 2,251.08 |

Received and filed Sept. 27, 1943, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 3038.

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I. and II.

Admits the allegations contained in paragraphs I and II of the petition.

. III.

Admits that the taxes in controversy are income taxes for the calendar years 1938 to 1941, inclusive, but denies that the total of the proposed deficiencies, aggregating \$7,025.11, is in controversy.

IV.

(1) to (5), inclusive. Denies that the respondent erred as alleged in subparagraphs (1) to (5), inclusive, of paragraph IV of the petition.

V.

(1) and (2) Admits the allegations contained in subparagraphs (1) and (2) of paragraph V of the petition.

(3) Admits that petitioner, in his income tax return for 1938, reported \$8,118.57 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$11,446.46, and accordingly increased taxable net income reported by petitioner by \$3,327.89. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (3) of paragraph V of the petition.

(4) Admits that petitioner, in his income tax return for 1939, reported \$8,726.32 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$12,418.08, and accordingly increased taxable net

income reported by petitioner by \$3,691.76. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (4) of paragraph V of the petition.

(5) Admits that petitioner, in his income tax return for 1940, reported \$9,385.93 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$13,413.66, and accordingly increased taxable net income reported by petitioner by \$4,027.73. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (5) of paragraph V of the petition.

(6) Admits that petitioner, in his income tax return for 1941, reported \$10,527.69 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$12,563.85, and accordingly increased taxable net income reported by petitioner by \$2,036.16. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (6) of paragraph V of the petition.

(7) Denies the allegations contained in subparagraph (7) of paragraph V of the petition.

VI.

Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

HAROLD D. THOMAS,
Special Attorney,
Bureau of Internal Revenue.

Received and filed Nov. 17, 1943 T. C. U. S.

The Tax Court of the United States
Washington

Docket No. 3038

PHILIP CHANDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Opinion of this Court promulgated May 23, 1949, it is

Ordered and Decided: That there are deficiencies in income tax for the calendar years 1939, 1940 and 1941 in the respective amounts of \$407.21; \$300.00; and \$1,209.86; and that there is an overpayment in income tax for the calendar year 1938 in the amount of \$13.79, which overpayment was made within three years before the execution of an agreement or the filing of a petition.

[Seal] /s/ WILLIAM W. ARNOLD,
 Judge.

Entered Nov. 30, 1949.

Served Dec. 1, 1949.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 3038

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

PHILIP CHANDLER,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby
petitions the United States Court of Appeals for the

Ninth Circuit to review the decision entered by The Tax Court of the United States on November 30, 1949, "That there are deficiencies in income tax for the calendar years 1939, 1940 and 1941 in the respective amounts of \$407.21; \$300.00; and \$1,209.86; and that there is an overpayment in income tax for the calendar year 1938 in the amount of \$13.79" in respect of the Federal income tax liability of Philip Chandler, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Philip Chandler, is a resident of Los Angeles, California, and filed his Federal income tax returns for the years 1938, 1939, 1940 and 1941 with the Collector of Internal Revenue for the Sixth District of California, whose office is in Los Angeles, California, and within the jurisdiction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought.

Nature of Controversy

The issue presented to and passed upon by The Tax Court of the United States and which was decided contrary to the Commissioner's determination is whether certain taxable stock dividends which were received by Chandler Trust No. 2, of which trust the respondent on review was one of the life tenant trustors, are taxable to the life tenant trustors of the trust, as determined by the Commissioner, or, as claimed by the taxpayer, to the trust

itself. The Tax Court held, contrary to the Commissioner's determination, that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable and that the stock dividends in question are taxable to the trust rather than to the life tenant beneficiaries and trustors. The Commissioner's determination in this and related cases was thus disapproved in so far as it reflected the Commissioner's inclusion of an allocate portion of the taxable stock dividends in the taxable income of each of the life tenant trustors for the years here involved.

/s/ THERON L. CAUDLE,
Assistant Attorney General

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attor-
neys for the Petitioner on Review.

Received and filed Feb. 17, 1950 T.C.U.S.

[Title of Court of Appeals and Cause.]

T. C. Docket No. 3038

STATEMENT OF POINTS

Comes now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oli-

phant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In ordering and deciding that there are deficiencies in income tax for the calendar years 1939, 1940 and 1941 in the respective amounts of \$407.21, \$300.00, and \$1,209.86; and that there is an overpayment in income tax for the calendar year 1938 in the amount of \$13.79.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner, as modified by the stipulation of the parties, on the basis that the stock dividends received by the Chandler Trust No. 2 were taxable to the life tenant trustors.

3. In holding that the Chandler Trust No. 2 was, for Federal income tax purposes, a valid trust under the laws of California.

4. In failing and refusing to hold and decide that the Chandler Trust No. 2 was, by virtue of the rights of amendment or modification reserved by the trustors, not a valid trust for Federal income tax purposes and that, accordingly, the taxable stock dividends received by the trust during the taxable years were taxable to the life tenant trustors under Sections 22(a) and/or Sections 166 and 167 of the Revenue Act of 1938 and the Internal Revenue Code, rather than in the trust itself.

5. In holding that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable.

6. In denying the Commissioner's motion to reconsider and set aside the Court's findings of fact and opinion.

7. In that its opinion and decision are contrary to the facts as stipulated by the parties.

8. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of Service attached.

Received and filed May 4, 1950, T.C.U.S.

The Tax Court of the United States

Docket No. 3039

CONSTANCE CHANDLER CROWE,

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PB) dated June 30, 1943, and as a basis of this proceeding alleges as follows:

I.

Petitioner is an individual residing at 1150 South Arroyo Drive, Pasadena, California. Returns for the period here involved were filed with the Collector for the Sixth District of California.

II.

The notice of deficiency, a copy of which is attached hereto, marked "Exhibit A" and made a part hereof, was mailed to the petitioner on June 30, 1943.

III.

The taxes in controversy are income taxes for the

calendar years 1938 to 1941, inclusive, totaling \$9496.92.

IV.

The determination of the taxes set forth in said notice of deficiency is based upon the following errors:

(1) Respondent erred in determining deficiencies in income tax for the years 1938 to 1941, inclusive, in the total sum of \$9496.92.

(2) Respondent erred in adding to petitioner's net taxable income for the year 1938 the sum of \$3327.88.

(3) Respondent erred in adding to petitioner's net taxable income for the year 1938 the sum of \$7209.79, representing partnership income belonging to petitioner's husband, Earl E. Crowe.

(4) Respondent erred in adding to petitioner's net taxable income for the year 1939 the sum of \$4028.18.

(5) Respondent erred in adding to petitioner's net taxable income for the year 1939 the sum of \$4200.25, representing partnership income belonging to petitioner's husband, Earl E. Crowe.

(6) Respondent erred in increasing petitioner's net taxable income for the year 1940 by the sum of \$4027.73.

(7) Respondent erred in adding to petitioner's net taxable income for the year 1940 the sum of

\$3124.19, representing partnership income belonging to petitioner's husband, Earl E. Crowe.

(8) Respondent erred in increasing petitioner's net taxable income for the year 1941 by the sum of \$2036.16.

(9) Respondent erred in adding to petitioner's net taxable income for the year 1941 the sum of \$1419.36, representing partnership income belonging to petitioner's husband, Earl E. Crowe.

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

(1) Petitioner is a resident of the County of Los Angeles, State of California, and as such filed her income tax returns for each of the years herein involved with the Collector of Internal Revenue for the Sixth Collection District of California.

(2) Petitioner during the years herein involved was a beneficiary under that certain trust designated Trust No. 2, wherein Marian Otis Chandler, May C. Goodan, Constance Chandler (Constance Chandler Crowe), Ruth C. Williamson, Norman Chandler, Harrison G. O. Chandler, Helen C. Garland, and Philip Chandler are designated "present trustees."

(3) Petitioner, as beneficiary, during the year 1938 received as her full and complete share of the distributive net income of said Trust No. 2 the sum

of \$8118.58, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1938 was the sum of \$11,446.46, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$3327.88. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(4) Petitioner's husband, Earl E. Crowe, was during the year 1938 a member of the partnership of Dobbs, Crowe and Company. Petitioner is informed and believes and therefore alleges that Earl E. Crowe's distributive share of the partnership profits for the year 1938 was the sum of \$18,024.46 and that only 20% thereof, or \$3604.89, represented community earnings. Notwithstanding this fact, respondent erroneously and illegally determined that the entire distributive share of said partnership earnings belonging to Earl E. Crowe was community earnings, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$7209.79.

(5) Petitioner, as beneficiary, during the year 1939 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$8389.89, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for

the year 1939 was the sum of \$12,418.07, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4028.18. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(6) Petitioner's husband, Earl E. Crowe, was during the year 1939 a member of the said partnership of Dobbs, Crowe and Company. Petitioner is informed and believes and therefore alleges that Earl E. Crowe's distributive share of the partnership profits for the year 1939 was the sum of \$10,500.62 and that only 20% thereof, or \$2100.12, represented community earnings. Notwithstanding this fact, respondent erroneously and illegally determined that the entire distributive share of said partnership earnings belonging to Earl E. Crowe was community earnings, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4200.25.

(7) Petitioner, as beneficiary, during the year 1940 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$9385.93, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1940 was the sum of \$13,413.66, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4027.73. No part of this last mentioned sum was either actually or con-

structively received by petitioner and no part thereof constituted taxable income.

(8) Petitioner's husband, Earl E. Crowe, was during the year 1940 a member of the said partnership of Dobbs, Crowe and Company. Petitioner is informed and believes and therefore alleges that Earl E. Crowe's distributive share of the partnership profits for the year 1940 was the sum of \$7810.49 and that only 20% thereof, or \$1562.10, represented community earnings. Notwithstanding this fact, respondent erroneously and illegally determined that the entire distributive share of said partnership earnings belonging to Earl E. Crowe was community earnings, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$3124.19.

(9) Petitioner, as beneficiary, during the year 1941 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$10,527.69, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1941 was the sum of \$12,563.85, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$2036.16. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(10) Petitioner's husband, Earl E. Crowe, was during the year 1941 a member of the said partner-

ship of Dobbs, Crowe and Company. Petitioner is informed and believes and therefore alleges that Earl E. Crowe's distributive share of the partnership profits for the year 1941 was the sum of \$2740.09 and that only 20% thereof, or \$548.02, represented community earnings. Notwithstanding this fact, respondent erroneously and illegally determined that the entire distributive share of said partnership earnings belonging to Earl E. Crowe was community earnings, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$1419.36.

(11) Respondent, under date of June 30, 1943, issued a notice of deficiency determining that said Trust No. 2 was an association taxable as a corporation. Under date of June 30, 1943, respondent issued a notice of deficiency determining that Trust No. 1, wherein Harry Chandler, Norman Chandler, and Marian Otis Chandler are designated "present trustees," and petitioner and others are designated "beneficiaries," was an association taxable as a corporation. Petitioner is informed and believes and therefore alleges that the trustees of each of the aforementioned trusts have filed or will file a petition to The United States Tax Court for a redetermination of the deficiencies set forth in said notices; and that the actions of the respondent in determining said trusts to be associations taxable as corporations and in determining the deficiencies herein involved are inconsistent, erroneous, and illegal.

Wherefore, petitioner prays that The Tax Court

of the United States hear this petition and redetermine the aforesaid deficiencies in accordance with the rights of the petitioner in the premises and grant any and all refunds that may be due as a result of such redetermination.

Dated September 20, 1943.

/s/ A. CALDER MACKAY

/s/ ARTHUR McGREGOR

/s/ HOWARD W. REYNOLDS

Counsel for Petitioner.

State of California

County of Los Angeles—ss.

Constance Chandler Crowe, being duly sworn, deposes and says that she is the petitioner above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ CONSTANCE CHANDLER
CROWE.

Subscribed and sworn to before me this 23d day of September, 1943.

[Seal] /s/ MARY E. WHITTHORNE,
Notary Public in and for said
County and State.

My Commission Expires November 26, 1945.

EXHIBIT A

Form 1279

Treasury Department

Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

June 30, 1943

Office of
Internal Revenue Agent in Charge
Los Angeles Division
LA:IT:90D:PB

Mrs. Constance Chandler Crowe,
1150 South Arroyo Drive,
Pasadena, California.

Madam:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1938 to 1941, inclusive, discloses a deficiency of \$9,496.92 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may

file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner,

By GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form of waiver.

Statement

LA:IT:90D:PB

Mrs. Constance Chandler Crowe,
1150 South Arroyo Drive,
Pasadena, California.

Tax Liability for the Taxable Years Ended

December 31, 1938, to 1941, Inclusive

Income Tax

| Year | Liability | Assessed | Deficiency |
|-------------|--------------------|--------------------|-------------------|
| 1938..... | \$ 5,779.69 | \$ 3,323.03 | \$2,456.66 |
| 1939..... | 6,845.67 | 4,778.92 | 2,066.75 |
| 1940..... | 12,016.33 | 8,909.44 | 3,106.89 |
| 1941..... | 14,362.71 | 12,496.09 | 1,866.62 |
| Total | <u>\$39,004.40</u> | <u>\$29,507.48</u> | <u>\$9,496.92</u> |

This determination of your income tax liability has been made upon the basis of information on file in this office.

A copy of this letter and statement has been mailed to your representative, Mr. J. H. Pulliam, Pacific Mutual Building, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to Net Income

Taxable Year Ended December 31, 1938

Net income as disclosed by return\$29,214.06

Additional income:

| | | |
|------------------------------|----------|-----------|
| (a) Interest received | \$ 68.06 | |
| (b) Partnership income | 7,209.79 | |
| (c) Trust income | 3,003.67 | 10,281.52 |

Net income adjusted\$39,495.58

Explanation of Adjustments

(a) You failed to report interest received on Illinois Commercial Telephone Company bond in the amount of \$68.06.

(b) Your community share of your husband's distributive share of income of the partnership Dobbs, Crowe and Company has been determined as \$9,012.23, in lieu of \$1,802.44 reported in your return, an increase of \$7,209.79. One-half, instead of one-tenth, of your husband's distributive share is taxable to you.

(c) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|-----------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1"..... | \$17,951.65 | \$17,627.44 | \$(324.21) |
| "Chandler Trust No. 2"..... | 8,118.58 | 11,446.46 | 3,327.88 |
| Total | \$26,070.23 | \$29,073.90 | \$3,003.67 |

Computation of Tax

Taxable Year Ended December 31, 1938

| | |
|---------------------------------------|-------------|
| Net income adjusted | \$39,495.58 |
| Less: Personal exemption | \$ 2,500.00 |
| Credit for dependent | 400.00 |
| Balance (surtax net income) | \$36,595.58 |
| Less: Earned income credit | 300.00 |
| Net income subject to normal tax..... | \$36,295.58 |
| Normal tax at 4% on \$36,295.58 | \$ 1,451.82 |
| Surtax on \$36,595.58 | 4,345.07 |
| Total income tax | \$ 5,796.89 |
| Less: Income tax paid at source | 17.20 |
| Correct income tax liability | \$ 5,779.69 |
| Income tax assessed: | |
| Original, account No. 206297 | 3,323.03 |
| Deficiency of income tax | \$ 2,456.66 |

Adjustments to Net Income

Taxable Year Ended December 31, 1939

| | |
|---|-------------|
| Net income as disclosed by return | \$35,466.10 |
| Additional income: | |
| (a) Interest received | \$ 76.44 |
| (b) Partnership income | 4,200.25 |
| (c) Trust income | 3,686.75 |
| Net income adjusted | \$43,429.54 |

Explanation of Adjustments

(a) Interest on savings accounts was received in the amount of \$534.71, in lieu of \$458.27 reported in your return.

(b) Your community share of your husband's distributive share of income of the partnership Dobbs, Crowe and Company has been determined as \$5,250.31, in lieu of \$1,050.06 reported in your return, an increase of \$4,200.25. One-half, instead of one-tenth, of your husband's distributive share is taxable to you.

(c) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount reported in your return | Amount determined taxable to you | Addition to income (reduction) |
|-----------------------------|-----------------------------------|-------------------------------------|--------------------------------------|
| "Chandler Trust No. 1"..... | \$21,560.46 | \$21,219.03 | \$(341.43) |
| "Chandler Trust No. 2"..... | 8,389.89 | 12,418.07 | 4,028.18 |
| Total | <u>\$29,950.35</u> | <u>\$33,637.10</u> | <u>\$3,686.75</u> |

Computation of Tax

Taxable Year Ended December 31, 1939

| | |
|--|--------------------|
| Net income adjusted | \$43,429.54 |
| Less: Personal exemption | \$ 2,500.00 |
| Credit for dependent | 400.00 2,900.00 |
| Balancee (surtax net income) | <u>\$40,529.54</u> |
| Less: Earned income credit | 300.00 |
| Net income subject to normal tax | <u>\$40,229.54</u> |
| Normal tax at 4% on \$40,229.54 | \$ 1,609.18 |
| Surtax on \$40,529.54 | 5,247.09 |
| Total income tax | <u>\$ 6,856.27</u> |
| Less: Income tax paid at source | 10.60 |
| Correct income tax liability | <u>\$ 6,845.67</u> |
| Income tax assessed: | |
| Original, account No. 202524 | 4,778.92 |
| Deficiency of income tax | <u>\$ 2,066.75</u> |

Adjustments to Net Income

Taxable Year Ended December 31, 1940

Net income as disclosed by return\$38,530.91

Additional income:

| | | |
|------------------------------|-----------|----------|
| (a) Dividends received | \$ 225.00 | |
| (b) Interest received | 63.66 | |
| (c) Partnership income | 3,124.19 | |
| (d) Trust income | 3,690.41 | 7,103.26 |

Net income adjusted\$45,634.17

Explanation of Adjustments

(a) You failed to report dividends received from Arden Farms Company in the amount of \$225.00.

(b) The following interest received on bonds was not reported in your return:

| | |
|-------------------------------|---------|
| Utah Power and Light Co. | \$13.33 |
| Libby, McNeil and Libby | 50.33 |

| | |
|-------------|---------|
| Total | \$63.66 |
|-------------|---------|

(c) Your community share of your husband's distributive share of income of the partnership Dobbs, Crowe and Company has been determined as \$3,905.24, in lieu of \$781.05 reported in your return, an increase of \$3,124.19. One-half, instead of one-tenth, of your husband's distributive share is taxable to you.

(d) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$23,314.74 | \$22,977.42 | \$(337.32) |
| "Chandler Trust No. 2" | 9,385.93 | 13,413.66 | 4,027.73 |
| Total | \$32,700.67 | \$36,391.08 | \$3,690.41 |

Computation of Alternative Tax

Taxable Year Ended December 31, 1940

| | | |
|--|-------------|----------|
| Net income adjusted | \$45,634.17 | |
| Plus: Net long-term capital loss | 997.79 | |
| Ordinary net income | \$46,631.96 | |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependent | 400.00 | 2,400.00 |
| Balance (surtax net income) | \$44,231.96 | |
| Less: Earned income credit | 300.00 | |
| Net income subject to normal tax | \$43,931.96 | |
| Normal tax at 4% on \$43,931.96 | \$ 1,757.28 | |
| Surtax on \$44,231.96 | 9,472.78 | |
| Partial tax | \$11,230.06 | |
| Minus: 30% of net long-term capital loss | 299.33 | |
| Alternative tax | \$10,930.73 | |

Computation of Tax

Taxable Year Ended December 31, 1940

| | | |
|--|-------------|----------|
| Net income adjusted | \$45,634.17 | |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependent | 400.00 | 2,400.00 |
| Balance (surtax net income) | \$43,234.17 | |
| Less: Earned income credit | 300.00 | |
| Net income subject to normal tax | \$42,934.17 | |
| Normal tax at 4% on \$42,934.17 | \$ 1,717.36 | |
| Surtax on \$43,234.17 | 9,104.30 | |
| Total | \$10,821.66 | |
| Alternative tax | \$10,930.73 | |
| Defense tax (10% of \$10,930.73) | 1,093.07 | |
| Total income tax | \$12,023.80 | |
| Less: Income tax paid at source | 7.47 | |
| Correct income tax liability | \$12,016.33 | |
| Income tax assessed: | | |
| Original, account No. 204872 | 8,909.44 | |
| Deficiency of income tax | \$ 3,106.89 | |

Adjustments to Net Income

Taxable Year Ended December 31, 1941

| | | |
|---|-------------|--------------------|
| Net income as disclosed by return | \$33,205.58 | |
| Additional income: | | |
| (a) Partnership income | \$ 1,419.36 | |
| (b) Trust income | 1,702.24 | 3,121.60 |
| Net income adjusted | | <u>\$36,327.18</u> |

Explanation of Adjustments

(a) Your husband's distributive share of income of the partnership Dobbs, Crowe and Company has been increased \$646.65 from \$2,740.09 to \$3,386.74. Your community share of said amount of \$3,386.74 has been determined as \$1,693.37, and since you reported \$274.01 income from this source in your return, an addition of \$1,419.36 is made. One-half, instead of one-tenth, of your husband's distributive share is taxable to you.

The determined amount of \$1,693.37 consists of:

| | |
|-----------------------------------|-------------------|
| Ordinary income | \$1,814.76 |
| Net short-term capital gain | 201.94 |
| Net long-term capital loss | (323.33) |
| Total | <u>\$1,693.37</u> |

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$23,311.10 | \$22,977.18 | \$(333.92) |
| "Chandler Trust No. 2" | 10,527.69 | 12,563.85 | 2,036.16 |
| Total | <u>\$33,838.79</u> | <u>\$35,541.03</u> | <u>\$1,702.24</u> |

Computation of Alternative Tax

Taxable Year Ended December 31, 1941

| | | |
|--|-------------|--------------------|
| Net income adjusted | | \$36,327.18 |
| Plus: Net long-term capital loss | | 7,394.35 |
| Ordinary net income | | <u>\$43,721.53</u> |
| Less: Personal exemption | \$ 1,500.00 | |
| Credit for dependent | 400.00 | 1,900.00 |
| Balance (surtax net income) | | <u>\$41,821.53</u> |
| Less: Earned income credit | | 300.00 |
| Net income subject to normal tax | | <u>\$41,521.53</u> |
| Normal tax at 4% on \$41,521.53 | \$ 1,660.86 | |
| Surtax on \$41,821.53 | 14,925.41 | |
| Partial tax | | <u>\$16,586.27</u> |
| Minus: 30% of net long-term capital loss | | 2,218.30 |
| Alternative tax | | <u>\$14,367.97</u> |

Computation of Tax

Taxable Year Ended December 31, 1941

| | | |
|--|-------------|--------------------|
| Net income adjusted | | \$36,327.18 |
| Less: Personal exemption | \$ 1,500.00 | |
| Credit for dependent | 400.00 | 1,900.00 |
| Balance (surtax net income) | | <u>\$34,427.18</u> |
| Less: Earned income credit | | 300.00 |
| Net income subject to normal tax | | <u>\$34,127.18</u> |
| Normal tax at 4% on \$34,127.18 | \$ 1,365.08 | |
| Surtax on \$34,427.18 | 11,113.59 | |
| Total | | <u>\$12,478.67</u> |
| Alternative tax | | <u>\$14,367.97</u> |
| Total income tax | | <u>\$14,367.97</u> |
| Less: Income tax paid at source | | 5.26 |
| Correct income tax liability | | <u>\$14,362.71</u> |
| Income tax assessed: | | |
| Original, account No. 312274 | | 12,496.09 |
| Deficiency of income tax | | <u>\$ 1,866.62</u> |

Received and filed Sept. 27, 1943, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 3039

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I. and II.

Admits the allegations contained in paragraphs I and II of the petition.

III.

Admits that the taxes in controversy are income taxes for the calendar years 1938 to 1941, inclusive, but denies that the total of the proposed deficiencies, aggregating \$9,496.92, is in controversy.

IV.

(1) to (9), inclusive. Denies the allegations contained in subparagraphs (1) to (9), inclusive, of paragraph IV of the petition.

V.

(1) and (2) Admits the allegations contained in subparagraphs (1) and (2), of paragraph V of the petition.

(3) Admits that the petitioner, in her income tax

return for 1938, reported \$8,118.58 as income from Trust No. 2. Admits that respondent determined that the income reportable by petitioner from said source was \$11,446.46, and accordingly increased net taxable income reported by petitioner by \$3,327.88. Denies that respondent's determination is erroneous, and denies the remaining allegations contained in subparagraph (3) of paragraph V of the petition.

(4) Admits that petitioner's husband was, during the year 1938, a member of the partnership of Dobbs, Crowe and Company. Admits that respondent added to petitioner's net taxable income the sum of \$7,209.79 by reason of increasing the amount reported as her share of her husband's distributive share of income of said partnership. Denies that said increase was erroneous and illegal and denies the remaining allegations in subparagraph (4) of paragraph V of the petition.

(5) Admits that the petitioner, in her income tax return for 1939, reported \$8,389.89 as income from Trust No. 2. Admits that respondent determined that the income reportable by petitioner from said source was \$12,418.07, and accordingly increased net taxable income reported by petitioner by \$4,028.18. Denies that respondent's determination is erroneous, and denies the remaining allegations contained in subparagraph (5) of paragraph V of the petition.

(6) Admits that petitioner's husband was, during the year 1939, a member of the partnership of

Dobbs, Crowe and Company. Admits that respondent added to petitioner's net taxable income the sum of \$4,200.25 by reason of increasing the amount reported as her share of her husband's distributive share of income of said partnership. Denies that said increase was erroneous and illegal and denies the remaining allegations contained in subparagraph (6) of paragraph V of the petition.

(7) Admits that the petitioner, in her income tax return for 1940, reported \$9,385.93 as income from Trust No. 2. Admits that respondent determined that the income reportable by petitioner from said source was \$13,413.66, and accordingly increased net taxable income reported by petitioner by \$4,027.73. Denies that respondent's determination is erroneous, and denies the remaining allegations contained in subparagraph (7) of paragraph V of the petition.

(8) Admits that petitioner's husband was, during the year 1940, a member of the partnership of Dobbs, Crowe and Company. Admits that respondent added to petitioner's net taxable income the sum of \$3,124.19 by reason of increasing the amount reported as her share of her husband's distributive share of income of said partnership. Denies that said increase was erroneous and illegal and denies the remaining allegations contained in subparagraph (8) of paragraph V of the petition.

(9) Admits that the petitioner, in her income tax return for 1941, reported \$10,527.69 as income from

Trust No. 2. Admits that respondent determined that the income reportable by petitioner from said source was \$12,563.85, and accordingly increased net taxable income reported by petitioner by \$2,036.16. Denies that respondent's determination is erroneous, and denies the remaining allegations contained in subparagraph (9) of paragraph V of the petition.

(10) Admits that petitioner's husband was, during the year 1941, a member of the partnership of Dobbs, Crowe and Company. Admits that respondent added to petitioner's net taxable income the sum of \$1,419.36 by reason of increasing the amount reported as her share of her husband's distributive share of income of said partnership. Denies that said increase was erroneous and illegal and denies the remaining allegations contained in subparagraph (10) of paragraph V of the petition.

(11) Denies the allegations contained in subparagraph (11) of paragraph V of the petition.

VI

Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

HAROLD D. THOMAS,
Special Attorney,
Bureau of Internal Revenue.

Received and filed Nov. 17, 1943 T.C.U.S.

The Tax Court of the United States, Washington
Docket No. 3039

CONSTANCE CHANDLER CROWE,
Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Opinion of this Court, promulgated May 23, 1949, it is

Ordered and decided: That there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941, in the respective amounts of \$1,577.88, \$938.28, \$1,286.73, and \$700.51.

[Seal] /s/ WILLIAM W. ARNOLD,
Judge.

Entered May 24, 1949.

Served May 25, 1949.

In the United States Court of Appeals for the
Ninth Circuit

T. C. Docket No. 3039

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review.

vs.

CONSTANCE CHANDLER CROWE,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on November 30, 1949, "That there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$1,577.88; \$938.28; \$1,286.73, and \$700.51" in respect of the Federal income tax liability of Constance Chandler Crowe, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Constance Chandler Crowe, is a resident of Pasadena, California, and filed her Federal income tax returns for the years 1938, 1939, 1940 and 1941 with the Collector of Internal Revenue for the Sixth District of California, whose office is in Los Angeles, California, and with-

in the jurisdiction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought.

Nature of Controversy

The issue presented to and passed upon by The Tax Court of the United States and which was decided contrary to the Commissioner's determination is whether certain taxable stock dividends which were received by Chandler Trust No. 2, of which trust the respondent on review was one of the life tenant trustors, are taxable to the life tenant trustors of the trust, as determined by the Commissioner, or, as claimed by the taxpayer, to the trust itself. The Tax Court held, contrary to the Commissioner's determination, that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable and that the stock dividends in question are taxable to the trust rather than to the life tenant beneficiaries and trustors. The Commissioner's determination in this and related cases was thus disapproved in so far as it reflected the Commissioner's inclusion of an allocate portion of the taxable stock dividends in the taxable income of each of the life tenant trustors for the years here involved.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for the Petitioner on Review.

Received and filed Feb. 17, 1950 U.S.C.A.

[Title of Court of Appeals and Cause.]

T. C. Docket No. 3039

STATEMENT OF POINTS

Comes now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In ordering and deciding that there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$1,577.88, \$938.28, \$1,286.73, and \$700.51.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner, as modified by the stipulation of the parties, on the basis that the stock dividends received by the Chandler Trust No. 2 were taxable to the life tenant trustors.

3. In holding that the Chandler Trust No. 2 was, for Federal income tax purposes, a valid trust under the laws of California.

4. In failing and refusing to hold and decide that the Chandler Trust No. 2 was, by virtue of the rights of amendment or modification reserved by the

trustors, not a valid trust for Federal income tax purposes and that, accordingly, the taxable stock dividends received by the trust during the taxable years were taxable to the life tenant trustors under Sections 22(a) and/or Sections 166 and 167 of the Revenue Act of 1938 and the Internal Revenue Code, rather than to the trust itself.

5. In holding that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable.

6. In denying the Commissioner's motion to reconsider and set aside the Court's findings of fact and opinion.

7. In that its opinion and decision are contrary to the facts as stipulated by the parties.

8. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of service attached.

Received and filed May 4, 1950 U.S.C.A.

The Tax Court of the United States

Docket No. 3040

HELEN CHANDLER GARLAND,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PB) dated June 30, 1943, and as a basis of this proceeding alleges as follows:

I.

Petitioner is an individual residing at 1999 Oak Knoll Avenue, San Marino, California. The returns for the period here involved were filed with the Collector for the Sixth District of California.

II.

The notice of deficiency, a copy of which is attached hereto, marked "Exhibit A" and made a part hereof, was mailed to the petitioner on June 30, 1943.

III.

The taxes in controversy are income taxes for the

calendar years 1938 to 1941, inclusive, totaling \$5186.62.

IV.

The determination of the taxes set forth in said notice of deficiency is based upon the following errors:

(1) Respondent erred in determining deficiencies in income tax for the years 1938 to 1941, inclusive, in the total sum of \$5186.62.

(2) Respondent erred in adding to petitioner's net taxable income for the year 1938 the sum of \$5299.74.

(3) Respondent erred in adding to petitioner's net taxable income for the year 1939 the sum of \$4188.00.

(4) Respondent erred in adding to petitioner's net taxable income for the year 1940 the sum of \$5195.60.

(5) Respondent erred in adding to petitioner's net taxable income for the year 1941 the sum of \$1727.23.

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

(1) Petitioner is a resident of the County of Los Angeles, State of California, and as such filed her income tax returns for each of the years herein involved with the Collector of Internal Revenue for the Sixth Collection District of California.

(2) Petitioner during the years herein involved was a beneficiary under that certain trust designated Trust No. 2, wherein Marian Otis Chandler, May C. Goodan, Constance Chandler (Constance Chandler Crowe), Ruth C. Williamson, Norman Chandler, Harrison G. O. Chandler, Helen C. Garland, and Philip Chandler are designated "present trustees."

(3) Petitioner, as beneficiary, during the year 1938 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$8118.59, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1938 was the sum of \$11,446.46, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$3327.87. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(4) Petitioner, as beneficiary, during the year 1939 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$8389.89, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1939 was the sum of \$12,418.07, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4028.18. No part of

this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(5) Petitioner, as beneficiary, during the year 1940 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$9385.93, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1940 was the sum of \$13,413.67, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4027.74. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(6) Petitioner, as beneficiary, during the year 1941 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$10,527.69, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1941 was the sum of \$12,563.85, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$2036.16. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(7) Respondent, under date of June 30, 1943, issued a notice of deficiency determining that said Trust No. 2 was an association taxable as a cor-

poration. Under date of June 30, 1943, respondent issued a notice of deficiency determining that Trust No. 1, wherein Harry Chandler, Norman Chandler, and Marian Otis Chandler are designated "present trustees" and petitioner and others are designated "beneficiaries", was an association taxable as a corporation. Petitioner is informed and believes and therefore alleges that the trustees of each of the aforementioned trusts have filed or will file a petition to The United States Tax Court for a redetermination of the deficiencies set forth in said notices, and that the actions of the respondent in determining said trusts to be associations taxable as corporations and in determining the deficiencies herein involved are inconsistent, erroneous, and illegal.

Wherefore, petitioner prays that The Tax Court of the United States hear this petition and redetermine the aforesaid deficiencies in accordance with the rights of the petitioner in the premises and grant any and all refunds that may be due as a result of such redetermination.

Dated September 20, 1943.

/s/ A. CALDER MACKAY,

/s/ ARTHUR MCGREGOR,

/s/ HOWARD W. REYNOLDS,

Counsel for Petitioner.

State of California

County of Los Angeles—ss.

Helen Chandler Garland, being duly sworn, deposes and says that she is the petitioner above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ HELEN CHANDLER GARLAND.

Subscribed and sworn to before me this 23rd day of September, 1943.

[Seal] /s/ MARY E. WHITTHORNE,
Notary Public in and for said
County and State.

My Commission Expires November 26, 1945.

EXHIBIT A

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

June 30, 1943

Office of
Internal Revenue Agent in Charge
Los Angeles Division
LA:IT:90D:PB

Mrs. Helen Chandler Garland,
1999 Oak Knoll Avenue,
San Marino, California

Madam:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1938 to 1941 inclusive discloses a deficiency of \$5,186.62 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C.,

for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner,

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent in Charge.

Enclosures:

Statement

Form of waiver.

Statement

LA :IT :90D :PB

Mrs. Helen Chandler Garland,
1999 Oak Knoll Avenue,
San Marino, California.

Tax Liability for the Taxable Years Ended

December 31, 1938 to 1941, Inclusive

Income Tax

| Year | Liability | Assessed | Deficiency |
|------------|--------------------|--------------------|-------------------|
| 1938..... | \$ 3,777.82 | \$ 2,639.64 | \$1,138.18 |
| 1939..... | 5,436.87 | 4,408.19 | 1,028.68 |
| 1940..... | 8,818.54 | 6,734.17 | 2,084.37 |
| 1941..... | 13,648.67 | 12,713.28 | 935.39 |
| Total..... | <u>\$31,681.90</u> | <u>\$26,495.28</u> | <u>\$5,186.62</u> |

This determination of your income tax liability has been made upon the basis of information on file in this office.

Adjustments to Net Income

Taxable Year Ended December 31, 1938

Net income as disclosed by return\$26,312.10

Additional income and unallowable deductions:

| | | |
|------------------------------------|-----------|----------|
| (a) Dividends received | \$ 130.00 | |
| (b) Interest received | 217.00 | |
| (c) Trust income | 3,003.65 | |
| (d) Long-term capital losses | 1,949.09 | 5,299.74 |

Net income adjusted\$31,611.84

Explanation of Adjustments

(a) Dividends were received from Security-First National Bank in the amount of \$650.00, instead of \$520.00 reported in your return.

(b) Interest received as follows is added to income:

| | |
|-------------------------------------|----------|
| Cities Service Company | \$ 46.58 |
| Nevada California Electric Co. | 18.61 |
| Central Investment Corp. | 116.25 |
| Mortgage Guarantee Co. | 35.56 |

Total\$217.00

(c) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$17,951.66 | \$17,627.44 | \$(324.22) |
| "Chandler Trust No. 2" | 8,118.59 | 11,446.46 | 3,327.87 |
| Total | \$26,070.25 | \$29,073.90 | \$3,003.65 |

(d) The following long-term capital losses claimed in your return are disallowed for lack of substantiation of basis of the securities sold:

| | |
|-------------------------------------|-----------|
| Central Investment Company | \$ 549.96 |
| Mortgage Guarantee Cert. | 385.80 |
| Nevada California Electric Co. | 436.49 |

Total.\$1,372.25

In lieu of the long-term capital loss of \$158.41 claimed from the sale of 327 shares of Massachusetts Investors Trust stock for \$6,273.26, there is determined no gain or loss from the sale of 127 of such shares for \$2,436.40 and a long-term capital gain of \$468.43 from the sale of 200 of such shares for \$3,836.86, resulting in an adjustment of \$626.84.

Due to a mathematical error in your return the long-term capital loss claimed from the sale of Southern California Edison company stock is understated \$50.00.

These adjustments result in the addition to income of the net amount of \$1,949.09.

Computation of Tax

Taxable Year Ended December 31, 1938

| | |
|--|----------------------|
| Net income adjusted | \$31,611.84 |
| Less: Personal exemption | \$ 2,500.00 |
| Credit for dependents | 800.00 3,300.00 |
| Balance (surtax net income) | \$28,311.84 |
| Less: Interest on U.S. obligations | 56.25 |
| Earned income credit | 300.00 356.25 |
| Net income subject to normal tax | \$27,955.59 |
| Normal tax at 4% on \$27,955.59 | \$ 1,118.22 |
| Surtax on \$28,311.84 | 2,679.25 |
| Total income tax | \$ 3,797.47 |
| Less: Income tax paid at source | 19.65 |
| Correct income tax liability | \$ 3,777.82 |
| Income tax assessed: | |
| Original, account No. 834696 | \$ 2,613.64 |
| Deficiency, March 1941, account No. 510087.... | 26.00 |
| Total | 2,639.64 |
| Deficiency of income tax | \$ 1,138.18 |

Adjustments to Net Income

Taxable Year Ended December 31, 1939

| | |
|---|----------------------|
| Net income as disclosed by return | \$34,384.24 |
| Additional income and unallowable deductions: | |
| (a) Dividends received | \$ 257.50 |
| (b) Trust income | 3,686.75 |
| (c) Long-term capital loss | 243.75 4,188.00 |
| Net income adjusted | \$38,572.24 |

Explanation of Adjustments

(a) The following dividends received are added to income reported:

| | |
|---|----------|
| Magma Copper Company | \$125.00 |
| National Malleable and Steel Castings Co. | 100.00 |
| Richfield Oil | 32.50 |
| Total | \$257.50 |

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$21,560.46 | \$21,219.03 | \$(341.43) |
| "Chandler Trust No. 2" | 8,389.89 | 12,418.07 | 4,028.18 |
| Total | \$29,950.35 | \$33,637.10 | \$3,686.75 |

(c) The long-term capital loss of \$243.75 claimed from the sale of \$5,000.00 Central Investment Corporation bonds is disallowed for lack of substantiation of the basis.

Computation of Tax

Taxable Year Ended December 31, 1939

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$38,572.24 |
| Less: Personal exemption | \$ 2,500.00 | |
| Credit for dependents | 800.00 | 3,300.00 |
| | | <hr/> |
| Balance (surtax net income) | | \$35,272.24 |
| Less: Interest on U.S. obligations | 133.13 | |
| Earned income credit | 300.00 | 433.13 |
| | | <hr/> |
| Net income subject to normal tax | | \$34,839.11 |
| Normal tax at 4% on \$34,839.11 | \$ 1,393.56 | |
| Surtax on \$35,272.24 | 4,067.17 | |
| | | <hr/> |
| Total income tax | | \$ 5,460.73 |
| Less: Income tax paid at source | | 23.86 |
| | | <hr/> |
| Correct income tax liability | | \$ 5,436.87 |
| Income tax assessed: | | |
| Original, account No. 202572 | | 4,408.19 |
| | | <hr/> |
| Deficiency of income tax | | \$ 1,028.68 |

Adjustments to Net Income

Taxable Year Ended December 31, 1940

| | | |
|---|----------|-------------|
| Net income as disclosed by return | | \$33,469.05 |
| Additional income and unallowable deductions: | | |
| (a) Dividends received | \$ 34.50 | |
| (b) Trust income | 3,690.42 | |
| (c) Short-term capital gain | 811.46 | |
| (d) Taxes disallowed | 659.22 | 5,195.60 |
| | | <hr/> |
| Total | | \$38,664.65 |
| Additional deduction: | | |
| (e) Interest paid | | 74.31 |
| | | <hr/> |
| Net income adjusted | | \$38,590.34 |

Explanation of Adjustments

(a) You failed to report dividends of \$34.50 received from Standard Oil Company (New Jersey).

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|-----------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1"..... | \$23,314.74 | \$22,977.42 | \$(337.32) |
| "Chandler Trust No. 2"..... | 9,385.93 | 13,413.67 | 4,027.74 |
| Total | \$32,700.67 | \$36,391.09 | \$3,690.42 |

(c) You failed to report a net short-term capital gain of \$811.46 consisting of the following gains from the sales of capital assets held not more than 18 months:

| Stock | Sale price | Cost | Gain |
|--|------------|------------|----------|
| 500 shares Northrup Aircraft, Inc..... | \$3,499.80 | \$2,727.27 | \$772.53 |
| 2 shares Massachusetts Investors Trust.. | 38.93 | 0.00 | 38.93 |
| Total | \$3,538.73 | \$2,727.27 | \$811.46 |

(d) The deduction claimed for taxes on real estate at 2960 Wilshire Boulevard is disallowed to the extent of \$511.43, representing taxes which had become a lien against the property prior to your purchase thereof as your separately owned property on December 20, 1939, held to constitute an additional cost of the property.

The deduction claimed for taxes on real estate at 1999 Oak Knoll Avenue is disallowed to the extent of \$150.33, representing your half of taxes which had become a lien against the property prior to the purchase thereof by you and your husband as joint tenants on December 14, 1939, held to constitute an additional cost of the property.

An additional deduction of \$2.54 is allowed as your half of the taxes on Oak Knoll Avenue property paid in December, 1940.

(e) An additional deduction of \$74.31 is allowed for interest paid.

Computation of Alternative Tax

Taxable Year Ended December 31, 1940

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$38,590.34 |
| Plus: Net long-term capital loss | | 1,669.71 |
| Ordinary net income | | \$40,260.05 |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependents | 800.00 | 2,800.00 |
| Balance (surtax net income) | | \$37,460.05 |
| Less: Earned income credit | | 300.00 |
| Net income subject to normal tax | | \$37,160.05 |
| Normal tax at 4% on \$37,160.05 | \$ 1,486.40 | |
| Surtax on \$37,460.05 | 7,041.82 | |
| Partial tax | | \$ 8,528.22 |
| Minus: 30% of net long-term capital loss | | 500.91 |
| Alternative tax | | \$ 8,027.31 |

Computation of Tax

Taxable Year Ended December 31, 1940

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$38,590.34 |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependents | 800.00 | 2,800.00 |
| Balance (surtax net income) | | \$35,790.34 |
| Less: Earned income credit | | 300.00 |
| Net income subject to normal tax | | \$35,490.34 |
| Normal tax at 4% on \$35,490.34 | \$ 1,419.61 | |
| Surtax on \$35,790.34 | 6,490.81 | |
| Total normal tax and surtax | | \$ 7,910.42 |
| Alternative tax | | \$ 8,027.31 |
| Defense tax (10% of \$8,027.31) | | 802.73 |
| Total income tax | | \$ 8,830.04 |
| Less: Income tax paid at source | | 11.50 |
| Correct income tax liability | | \$ 8,818.54 |
| Income tax assessed: | | |
| Original, account No. 203445 | | 6,734.17 |
| Deficiency of income tax | | \$ 2,084.37 |

Adjustments to Net Income

Taxable Year Ended December 31, 1941

| | |
|---|-------------|
| Net income as disclosed by return | \$37,204.39 |
| Additional income: | |
| (a) Dividends received | \$ 25.00 |
| (b) Trust income | 1,702.23 |
| | <hr/> |
| Net income adjusted | \$38,931.62 |

Explanation of Adjustments

(a) You failed to report dividends of \$25.00 received from National Malleable Steel and Casting Company.

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$23,311.10 | \$22,977.17 | \$(333.93) |
| "Chandler Trust No. 2" | 10,527.69 | 12,563.85 | 2,036.16 |
| | <hr/> | <hr/> | <hr/> |
| Total | \$33,838.79 | \$35,541.02 | \$1,702.23 |

Computation of Tax

Taxable Year Ended December 31, 1941

| | |
|--|-------------|
| Net income adjusted | \$38,931.62 |
| Less: Personal exemption | \$ 1,500.00 |
| Credit for dependents | 800.00 |
| | <hr/> |
| Balance (surtax net income) | \$36,631.62 |
| Less: Earned income credit | 300.00 |
| | <hr/> |
| Net income subject to normal tax | \$36,331.62 |
| Normal tax at 4% on \$36,331.62 | \$ 1,453.26 |
| Surtax on \$36,631.62 | 12,215.81 |
| | <hr/> |
| Total income tax | \$13,669.07 |
| Less: Income tax paid at source | 20.40 |
| | <hr/> |
| Correct income tax liability | \$13,648.67 |
| Income tax assessed: | |
| Original, account No. 312313 | 12,713.28 |
| | <hr/> |
| Deficiency of income tax | \$ 935.39 |

Received and filed Sept. 27, 1943, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 3040

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I. and II.

Admits the allegations contained in paragraphs I and II of the petition.

III.

Admits that the taxes in controversy are income taxes for the calendar years 1938 to 1941, inclusive, but denies that the total of the proposed deficiencies, aggregating \$5,186.62, is in controversy.

IV.

(1) to (5), inclusive. Denies that the respondent erred as alleged in subparagraphs (1) to (5), inclusive, of paragraph IV of the petition.

V.

(1) and (2) Admits the allegations contained in subparagraphs (1) and (2) of paragraph V of the petition.

(3) Admits that petitioner, in her income tax return for 1938, reported \$8,118.59 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$11,446.46, and accordingly increased taxable net income reported by petitioner by \$3,327.87. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (3) of paragraph V of the petition.

(4) Admits that petitioner, in her income tax return for 1939, reported \$8,389.89 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$12,418.07, and accordingly increased taxable net income reported by petitioner by \$4,028.18. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (4) of paragraph V of the petition.

(5) Admits that petitioner, in her income tax return for 1940, reported \$9,385.93 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$13,413.67, and accordingly increased taxable net income reported by petitioner by \$4,027.74. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (5) of paragraph V of the petition.

(6) Admits that petitioner, in her income tax return for 1941, reported \$10,527.69 as income from Trust No. 2. Admits that respondent determined

that the amount reportable from said source was \$12,563.85, and accordingly increased taxable net income reported by petitioner by \$2,036.16. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (6) of paragraph V of the petition.

(7) Denies the allegations contained in subparagraph (7) of paragraph V of the petition.

VI.

Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.
HAROLD D. THOMAS,
Special Attorney, Bureau of
Internal Revenue.

Received and filed Nov. 17, 1943 T.C.U.S.

The Tax Court of the United States
Washington

Docket No. 3040

HELEN CHANDLER GARLAND,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Opinion of this Court, promulgated May 23, 1949, it is

Ordered and Decided: That there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$133.03, \$59.22, \$582.38, and \$16.20.

[Seal]

WILLIAM W. ARNOLD,
Judge.

Entered May 24, 1949.

Served May 25, 1949.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 3040

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,
vs.

HELEN CHANDLER GARLAND,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on November 30, 1949, "That there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$133.03; \$59.22; \$582.38, and \$16.20" in respect of the Federal income tax liability of Helen Chandler Garland, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Helen Chandler Garland, is a resident of San Marino, California, and filed her Federal income tax returns for the years 1938, 1939, 1940 and 1941 with the Collector of Internal Revenue for the Sixth District of California, whose office is in Los Angeles, California, and within

the jurisdiction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought.

Nature of Controversy

The issue presented to and passed upon by The Tax Court of the United States and which was decided contrary to the Commissioner's determination is whether certain taxable stock dividends which were received by Chandler Trust No. 2, of which trust the respondent on review was one of the life tenant trustors, are taxable to the life tenant trustors of the trust, as determined by the Commissioner, or, as claimed by the taxpayer, to the trust itself. The Tax Court held, contrary to the Commissioner's determination, that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable and that the stock dividends in question are taxable to the trust rather than to the life tenant beneficiaries and trustors. The Commissioner's determination in this and related cases was thus disapproved in so far as it reflected the Commissioner's inclusion of an allocated portion of the taxable stock dividends in the taxable income of each of the life tenant trustors for the years here involved.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for the Petitioner on Review.

Received and filed Feb. 17, 1950 U.S.C.A.

[Title of Court of Appeals and Cause.]

Docket No. 3040

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In ordering and deciding that there are deficiencies in income tax for the calendar years 1938, 1939, 1940 and 1941 in the respective amounts of \$133.03, \$59.22, \$582.38, and \$16.20.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner, as modified by the stipulation of the parties, on the basis that the stock dividends received by the Chandler Trust No. 2 were taxable to the life tenant trustors.

3. In holding that the Chandler Trust No. 2 was, for Federal income tax purposes, a valid trust under the laws of California.

4. In failing and refusing to hold and decide that the Chandler Trust No. 2 was, by virtue of the rights of amendment or modification reserved by the trustors, not a valid trust for Federal income

tax purposes and that, accordingly, the taxable stock dividends received by the trust during the taxable years were taxable to the life tenant trustors under Sections 22(a) and/or Sections 166 and 167 of the Revenue Act of 1938 and the Internal Revenue Code, rather than to the trust itself.

5. In holding that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable.

6. In denying the Commissioner's motion to reconsider and set aside the Court's findings of fact and opinion.

7. In that its opinion and decision are contrary to the facts as stipulated by the parties.

8. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of service attached.

Received and filed May 4, 1950 U.S.C.A.

The Tax Court of the United States

Docket No. 3041

RUTH C. WILLIAMSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PB) dated June 30, 1943, and as a basis of this proceeding alleges as follows:

I.

Petitioner is an individual residing at 1025 Arden Road, Pasadena, California. The returns for the period here involved were filed with the Collector for the Sixth District of California.

II.

The notice of deficiency, a copy of which is attached hereto, marked "Exhibit A" and made a part hereof, was mailed to the petitioner on June 30, 1943.

III.

The taxes in controversy are income taxes for the

calendar years 1938 to 1941, inclusive, totaling \$6,025.33.

IV.

The determination of the taxes set forth in said notice of deficiency is based upon the following errors:

(1) Respondent erred in determining deficiencies in income tax for the years 1938 to 1941, inclusive, in the total sum of \$6,025.33.

(2) Respondent erred in adding to petitioner's net taxable income for the year 1938 the sum of \$3,327.87.

(3) Respondent erred in adding to petitioner's net taxable income for the year 1939 the sum of \$4,028.18.

(4) Respondent, in determining petitioner's net taxable income for the year 1939, erred in failing to allow as a deduction the sum of \$2,517.50, representing a loss sustained on stock which became worthless.

(5) Respondent erred in increasing petitioner's net taxable income for the year 1940 by the sum of \$4,027.74.

(6) Respondent erred in increasing petitioner's net taxable income for the year 1941 by the sum of \$2,036.16.

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

(1) Petitioner is a resident of the County of Los Angeles, State of California, and as such filed her income tax returns for each of the years herein involved with the Collector of Internal Revenue for the Sixth Collection District of California.

(2) Petitioner during the years herein involved was a beneficiary under that certain trust designated Trust No. 2, wherein Marian Otis Chandler, May C. Goodan, Constance Chandler (Constance Chandler Crowe), Ruth C. Williamson, Norman Chandler, Harrison G. O. Chandler, Helen C. Garland, and Philip Chandler are designated "present trustees."

(3) Petitioner, as beneficiary, during the year 1938 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$8,118.59, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1938 was the sum of \$11,446.46, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$3,327.87. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(4) Petitioner, as beneficiary, during the year 1939 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$8,389.89, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1939 was the sum of \$12,418.07, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4,028.18. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(5) Petitioner and her husband, Frederick W. Williamson, during the year 1937 purchased 50 shares of preferred stock and 35 shares of common capital stock of Coronado Fisheries, Inc., for which they paid \$5,035.00. Petitioner is informed and believes and therefore states that during the year 1939 the said stock became worthless; notwithstanding the foregoing, respondent erroneously and illegally failed to allow as a deduction one-half of the purchase price of said stock, or the sum of \$2,517.50.

(6) Petitioner, as beneficiary, during the year 1940 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$9,385.93, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's

distributive share of the net income of said trust for the year 1940 was the sum of \$13,413.67, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$4,027.74. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(7) Petitioner, as beneficiary, during the year 1941 received as her full and complete share of the distributive net income of said Trust No. 2 the sum of \$10,527.69, which she reported in her income tax return. Notwithstanding this fact respondent erroneously and illegally determined that petitioner's distributive share of the net income of said trust for the year 1941 was the sum of \$12,563.85, thereby erroneously and illegally overstating petitioner's net taxable income by the sum of \$2,036.16. No part of this last mentioned sum was either actually or constructively received by petitioner and no part thereof constituted taxable income.

(8) Respondent, under date of June 30, 1943, issued a notice of deficiency determining that said Trust No. 2 was an association taxable as a corporation. Under date of June 30, 1943, respondent issued a notice of deficiency determining that Trust No. 1, wherein Harry Chandler, Norman Chandler, and Marian Otis Chandler are designated "present trustees" and petitioner and others are designated "beneficiaries," was an association taxable as a corporation. Petitioner is informed and believes and

therefore alleges that the trustees of each of the aforementioned trusts have filed or will file a petition to The United States Tax Court for a redetermination of the deficiencies set forth in said notices, and that the actions of the respondent in determining said trusts to be associations taxable as corporations and in determining the deficiencies herein involved are inconsistent, erroneous, and illegal.

Wherefore, petitioner prays that The Tax Court of the United States hear this petition and redetermine the aforesaid deficiencies in accordance with the rights of the petitioner in the premises and grant any and all refunds that may be due as a result of such redetermination.

Dated September 20, 1943.

/s/ A. CALDER MACKAY,

/s/ ARTHUR McGREGOR,

/s/ HOWARD W. REYNOLDS,

Counsel for Petitioner.

State of California,
County of Los Angeles—ss.

Ruth C. Williamson, being duly sworn, deposes and says that she is the petitioner above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ RUTH C. WILLIAMSON.

Subscribed and sworn to before me this 23rd day of September, 1943.

[Seal] /s/ MARY E. WHITTHORNE,
Notary Public in and for said County and State.

My Commission expires November 26, 1945.

EXHIBIT A

Form 1279

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

June 30, 1943

Office of Internal Revenue Agent in Charge
Los Angeles Division

LA:IT:90D:PB

Mrs. Ruth C. Williamson,
1025 Arden Road,
Pasadena, California.

Madam:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1938 to 1941, inclusive, discloses a deficiency of \$6,025.33, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington, D. C.,

for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

PB:ft

Enclosures:

Statement

Form of Waiver.

Statement

LA:IT:90D:PB

Mrs. Ruth C. Williamson,
1025 Arden Road,
Pasadena, California.

Tax Liability for the Taxable Years Ended
December 31, 1938, to 1941, Inclusive

Income Tax

| Year | Liability | Assessed | Deficiency |
|------------|-------------|-------------|------------|
| 1938..... | \$ 7,357.64 | \$ 6,419.97 | \$ 937.67 |
| 1939..... | 8,845.60 | 6,186.68 | 2,658.92 |
| 1940..... | 15,453.78 | 13,716.28 | 1,737.50 |
| 1941..... | 34,893.18 | 34,201.94 | 691.24 |
| Total..... | \$66,550.20 | \$60,524.87 | \$6,025.33 |

This determination of your income tax liability has been made upon the basis of information on file in this office.

If you do not acquiesce in all of the adjustments making up the deficiency indicated, but desire to stop the accumulation of interest on that part of the deficiency resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amount of the deficiency you desire to have assessed at once. The execution of the form for the agreed portion of the deficiency will not deprive you of your right to petition The Tax Court of the United States for a re-determination of the deficiency.

A copy of this letter and statement has been mailed to your representative, Mr. A. Calder Mackay, 523 West Sixth Street, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to Net Income

Taxable Year Ended December 31, 1938

| | |
|---|-------------|
| Net income as disclosed by return | \$43,253.21 |
| Additional income: | |
| (a) Dividends received | \$ 147.52 |
| (b) Trust income | 3,003.66 |
| (c) Rents received | 381.45 |
| | <hr/> |
| Total | \$46,785.84 |
| Additional deductions: | |
| (d) Taxes | 183.82 |
| | <hr/> |
| Net income adjusted | \$46,602.02 |

Explanation of Adjustments

(a) You failed to include in dividends \$75.00 received on Texas Gulf Sulphur Company stock and \$75.62 on Safeway Stores common stock, a total of \$150.62, and you overstated the amount of dividends from Honolulu Oil Company in the amount of \$3.10, a net understatement of \$147.52.

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount reported in your return | Amount determined taxable to you | Addition to income (reduction) |
|-----------------------------|-----------------------------------|-------------------------------------|--------------------------------------|
| "Chandler Trust No. 1"..... | \$17,951.66 | \$17,627.45 | (\$324.21) |
| "Chandler Trust No. 2"..... | 8,118.59 | 11,446.46 | 3,327.87 |
| Total | \$26,070.25 | \$29,073.91 | \$3,003.66 |

(c) Three-fourths, instead of one-half, of the \$1,525.82 net rental from Wilshire Boulevard property is taxable to you.

(d) Three-fourths, instead of one-half, of the \$735.27 taxes on Wilshire Boulevard property is deductible by you.

Computation of Tax

Taxable Year Ended December 31, 1938

| | |
|--|-------------|
| Net income adjusted | \$46,602.02 |
| Less: Personal exemption | \$ 2,500.00 |
| Credit for dependents | 1,600.00 |
| Balance (surtax net income) | \$42,502.02 |
| Less: Earned income credit | 1,398.04 |
| Net income subject to normal tax | \$41,103.98 |
| Normal tax at 4% on \$41,103.98 | \$ 1,644.16 |
| Surtax on \$42,502.02 | 5,720.48 |
| Total income tax | \$ 7,364.64 |
| Less: Income tax paid at source | 7.00 |
| Correct income tax liability | \$ 7,357.64 |
| Income tax assessed: | |
| Original, account No. 206729 | 6,419.97 |
| Deficiency of income tax | \$ 937.67 |

Adjustments to Net Income

Taxable Year Ended December 31, 1939

| | |
|---|-------------|
| Net income as disclosed by return | \$12,420.32 |
| Additional income and unallowable deductions: | |
| (a) Dividends received | \$ 125.00 |
| (b) Interest received | 333.33 |
| (c) Trust income | 3,686.75 |
| (d) Rents received | 481.68 |
| (e) Long-term capital gain | 3,144.00 |
| (f) Bad debts disallowed | 1,640.16 |
| | 9,410.92 |
| Total | \$51,831.24 |
| Additional deduction: | |
| (g) Taxes | 268.77 |
| Net income adjusted | \$51,562.47 |

Explanation of Adjustments

(a) You failed to include in dividends \$25.00 received on Texas Gulf Sulphur Company stock and \$139.75 on Safeway Stores common stock, a total of \$164.75, and you overstated the amount of dividend from Honolulu Oil Company in the amount of \$39.75, a net understatement of \$125.00.

(b) Interest received on Los Angeles Traction Company bonds has been determined in the amount of \$500.00, in lieu of \$166.67 reported in your return.

(c) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$21,560.46 | \$21,219.03 | (\$341.43) |
| "Chandler Trust No. 2" | 8,389.89 | 12,418.07 | 4,028.18 |
| Total | \$29,950.35 | \$33,637.10 | \$3,686.75 |

(d) Three-fourths, instead of one-half, of the \$1,926.74 net rental from Wilshire Boulevard property is taxable to you.

(e) The long-term capital loss of \$1,205.06 claimed from the sale of 400 shares of Signal Oil & Gas Company stock is adjusted to a long-term capital gain of \$1,938.94 due to a decrease of \$6,288.00 in the basis of the stock sold.

(f) The deduction claimed for bad debts includes an amount of \$1,640.16 which is not an allowable deduction under section 23(k) of the Internal Revenue Code.

(g) Three-fourths, instead of one-half, of the \$760.15 taxes on Wilshire Boulevard property is deductible by you, and the entire amount, instead of one-half, of the \$157.46 taxes on Ambrose Street property is deductible by you.

Computation of Alternative Tax

Taxable Year Ended December 31, 1939

| | |
|---|--------------------|
| Net income adjusted | \$51,562.47 |
| Minus: Net long-term capital gain | 2,038.92 |
| Ordinary net income | <u>\$49,523.55</u> |
| Less: Personal exemption | \$ 2,500.00 |
| Credit for dependents | 1,600.00 |
| | <u>4,100.00</u> |
| Balance (surtax net income) | \$45,423.55 |
| Less: Earned income credit | 1,009.45 |
| Net income subject to normal tax | <u>\$44,414.10</u> |
| Normal tax at 4% on \$44,414.10 | \$ 1,776.56 |
| Surtax on \$45,423.55 | 6,464.36 |
| Partial tax | <u>\$ 8,240.92</u> |
| Plus: 30% of net long-term capital gain | 611.68 |
| Alternative tax | <u>\$ 8,852.60</u> |

Computation of Tax

Taxable Year Ended December 31, 1939

| | |
|--|--------------------|
| Net income adjusted | \$51,562.47 |
| Less: Personal exemption | \$ 2,500.00 |
| Credit for dependents | 1,600.00 |
| | <u>4,100.00</u> |
| Balance (surtax net income) | \$47,462.47 |
| Less: Earned income credit | 1,009.45 |
| Net income subject to normal tax | <u>\$46,453.02</u> |
| Normal tax at 4% on \$46,453.02 | \$ 1,858.12 |
| Surtax on \$47,462.47 | 7,014.87 |
| Total | <u>\$ 8,872.99</u> |
| Alternative tax | \$ 8,852.60 |
| Total income tax | \$ 8,852.60 |
| Less: Income tax paid at source | 7.00 |
| Correct income tax liability | \$ 8,845.60 |
| Income tax assessed: | |
| Original, account No. 203568 | 6,186.68 |
| Deficiency of income tax | <u>\$ 2,658.92</u> |

Adjustments to Net Income

Taxable Year Ended December 31, 1940

| | | |
|---|-------------|-------------|
| Net income as disclosed by return | \$51,335.90 | |
| Additional income: | | |
| (a) Dividends | \$ 62.50 | |
| (b) Trust income | 3,690.42 | 3,752.92 |
| Total | | \$55,088.82 |
| Additional deduction: | | |
| (c) Taxes | | 163.03 |
| Net income adjusted | | \$54,925.79 |

Explanation of Adjustments

(a) Three-fourths, instead of one-half, of \$250.00 dividends received from Texas Gulf Sulphur Company is taxable to you.

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount reported in your return | Amount determined taxable to you | Addition to income (reduction) |
|------------------------------|-----------------------------------|-------------------------------------|--------------------------------------|
| "Chandler Trust No. 1" | \$23,314.74 | \$22,977.42 | (\$337.32) |
| "Chandler Trust No. 2" | 9,385.93 | 13,413.67 | 4,027.74 |
| Total | \$32,700.67 | \$36,391.09 | \$3,690.42 |

(c) Three-fourths, instead of one-half, of the \$652.13 taxes on Wilshire Boulevard property is deductible by you.

Computation of Alternative Tax

Taxable Year Ended December 31, 1940

| | | |
|---|-------------|-------------|
| Net income adjusted | \$54,925.79 | |
| Minus: Net long-term capital gain | 1,850.46 | |
| Ordinary net income | | \$53,075.33 |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependents | 1,600.00 | 3,600.00 |
| Balance (surtax net income) | | \$49,475.33 |
| Less: Earned income credit | | 1,225.78 |
| Net income subject to normal tax | | \$48,249.55 |
| Normal tax at 4% on \$48,249.55 | \$ 1,929.98 | |
| Surtax on \$49,475.33 | 11,570.13 | |
| Partial tax | | \$13,500.11 |
| Plus: 30% of net long-term capital gain | | 555.14 |
| Alternative tax | | \$14,055.25 |

Computation of Tax

Taxable Year Ended December 31, 1940

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$54,925.79 |
| Less: Personal exemption | \$ 2,000.00 | |
| Credit for dependents | 1,600.00 | 3,600.00 |
| Balance (surtax net income) | | \$51,325.79 |
| Less: Earned income credit | | 1,225.78 |
| Net income subject to normal tax | | \$50,100.01 |
| Normal tax at 4% on \$50,100.01 | \$ 2,004.00 | |
| Surtax on \$51,325.79 | 12,363.35 | |
| Total normal tax and surtax | | \$14,367.35 |
| Alternative tax | | \$14,055.25 |
| Defense tax (10% of \$14,055.25) | | 1,405.53 |
| Total income tax | | \$15,460.78 |
| Less: Income tax paid at source | | 7.00 |
| Correct income tax liability | | \$15,453.78 |
| Income tax assessed: | | |
| Original, account No. 204720 | | 13,716.28 |
| Deficiency of income tax | | \$ 1,737.50 |

Adjustments to Net Income

Taxable Year Ended December 31, 1941

| | |
|---|------------------------|
| Net income as disclosed by return | \$72,229.47 |
| Additional income: | |
| (a) Long-term capital gain | \$ 786.00 |
| (b) Trust income | 1,702.23 2,488.23 |
| Net income adjusted | <u>\$74,717.70</u> |

Explanation of Adjustments

(a) The long-term capital loss of \$307.50 claimed from the sale of 100 shares of Signal Oil & Gas Company stock is adjusted to a long-term capital gain of \$478.50 due to a decrease of \$1,572.00 on the basis of the stock sold.

(b) Income from "Chandler Trust No. 1" and "Chandler Trust No. 2" taxable to you has been adjusted as follows:

| | Amount re- ported in your return | Amount deter- mined taxable to you | Addition to income (reduction) |
|------------------------------|--|--|--------------------------------------|
| "Chandler Trust No. 1" | \$23,311.10 | \$22,977.17 | (\$333.93) |
| "Chandler Trust No. 2" | 10,527.69 | 12,563.85 | 2,036.16 |
| Total | <u>\$33,838.79</u> | <u>\$35,541.02</u> | <u>\$1,702.23</u> |

Computation of Alternative Tax

Taxable Year Ended December 31, 1941

| | |
|--|------------------------|
| Net income adjusted | \$74,717.70 |
| Plus: Net long-term capital loss | 2,213.39 |
| Ordinary net income | <u>\$76,931.09</u> |
| Less: Personal exemption | \$ 1,500.00 |
| Credit for dependents | 1,600.00 4,100.00 |
| Balance (surtax net income) | <u>\$72,831.09</u> |
| Less: Earned income credit | 1,400.00 |
| Net income subject to normal tax | <u>\$71,431.09</u> |
| Normal tax at 4% on \$71,431.09 | \$ 2,857.24 |
| Surtax on \$72,831.09 | 32,706.96 |
| Partial tax | <u>\$35,564.20</u> |
| Minus: 30% of net long-term capital loss | 664.02 |
| Alternative tax | <u>\$34,900.18</u> |

Computation of Tax

Taxable Year Ended December 31, 1941

| | | |
|--|-------------|-------------|
| Net income adjusted | | \$74,717.70 |
| Less: Personal exemption | \$ 1,500.00 | |
| Credit for dependents | 1,600.00 | 3,100.00 |
| | | <hr/> |
| Balance (surtax net income) | | \$71,617.70 |
| Less: Earned income credit | | 1,400.00 |
| | | <hr/> |
| Net income subject to normal tax | | \$70,217.70 |
| Normal tax at 4% on \$70,217.70 | \$ 2,808.71 | |
| Surtax on \$71,617.70 | 31,966.80 | |
| | | <hr/> |
| Total | | \$34,775.51 |
| Alternative tax | | \$34,900.18 |
| Total income tax | | \$34,900.18 |
| Less: Income tax paid at source | | 7.00 |
| | | <hr/> |
| Correct income tax liability | | \$34,893.18 |
| Income tax assessed: | | |
| Original, account No. 336636 | | 34,201.94 |
| | | <hr/> |
| Deficiency of income tax | | \$ 691.24 |

Received and filed Sept. 27, 1943, T.C.U.S.

[Title Tax Court and Cause.]

Docket No. 3041

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I. and II.

Admits the allegations contained in paragraphs I and II of the petition.

III.

Admits that the taxes in controversy are income taxes for the calendar years 1938 to 1941, inclusive, but denies that the total of the proposed deficiencies, aggregating \$6,025.33, is in controversy.

IV.

(1) to (6), inclusive. Denies that the respondent erred as alleged in subparagraphs (1) to (6), inclusive, of paragraph IV of the petition.

V.

(1) and (2). Admits the allegations contained in subparagraphs (1) and (2) of paragraph V of the petition.

(3). Admits that petitioner, in her income tax return for 1938, reported \$8,118.59 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$11,446.46, and accordingly increased taxable net income reported by petitioner by \$3,327.87. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (3) of paragraph V of the petition.

(4). Admits that petitioner, in her income tax

return for 1939, reported \$8,389.89 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$12,418.07, and accordingly increased taxable net income reported by petitioner by \$4,028.18. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (4) of paragraph V of the petition.

(5). Denies the allegations contained in subparagraph (5) of paragraph V of the petition.

(6). Admits that petitioner, in her income tax return for 1940, reported \$9,385.93 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$13,413.67, and accordingly increased taxable net income reported by petitioner by \$4,027.74. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (6) of paragraph V of the petition.

(7). Admits that petitioner, in her income tax return for 1941, reported \$10,527.69 as income from Trust No. 2. Admits that respondent determined that the amount reportable from said source was \$12,563.85, and accordingly increased taxable net income reported by petitioner by \$2,036.16. Denies that respondent's determination was erroneous, and denies the remaining allegations contained in subparagraph (7) of paragraph V of the petition.

(8). Denies the allegations contained in subparagraph (8) of paragraph V of the petition.

VI.

Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

HAROLD D. THOMAS,
Special Attorney, Bureau of Internal Revenue.

Received and filed November 17, 1943, T.C.U.S.

The Tax Court of the United States, Washington

Docket No. 3041

RUTH C. WILLIAMSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the Opinion of this Court, promulgated May 23, 1949, it is

Ordered and Decided: That there are deficiencies in income tax for the calendar years 1938, 1939, and 1941 in the respective amounts of \$96.65, \$1,583.92, and \$234.79; and that there is an overpayment in income tax for the calendar year 1940 in the amount of \$48.66, which overpayment was made within three years before the filing of the petition.

/s/ WILLIAM W. ARNOLD,
Judge.

Entered May 24, 1949.

Served May 25, 1949.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 3041

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,
vs.

RUTH C. WILLIAMSON,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on November 30, 1949, "That there are deficiencies in income tax for the calendar years 1938, 1939, and 1941 in the respective amounts of \$96.65, \$1,583.92, and \$234.79, and that there is an overpayment in income tax for the calendar year 1940 in the amount of \$48.66" in respect of the Federal income tax liability of Ruth C. Williamson, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Ruth C. Williamson, is a resident of Pasadena, California, and filed her Federal income tax returns for the years 1938, 1939, 1940 and 1941 with the Collector of Internal Revenue for the Sixth District of California, whose

office is in Los Angeles, California, and within the jurisdiction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought.

Nature of Controversy

The issue presented to and passed upon by The Tax Court of the United States and which was decided contrary to the Commissioner's determination is whether certain taxable stock dividends which were received by Chandler Trust No. 2, of which trust the respondent on review was one of the life tenant trustors, are taxable to the life tenant trustors of the trust, as determined by the Commissioner, or, as claimed by the taxpayer, to the trust itself. The Tax Court held, contrary to the Commissioner's determination, that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable and that the stock dividends in question are taxable to the trust rather than to the life tenant beneficiaries and trustors. The Commissioner's determination in this and related cases was thus disapproved in so far as it reflected the Commissioner's inclusion of an allocated portion of the taxable stock dividends in the taxable income of each of the life tenant trustors for the years here involved.

/s/ THERON L. CAUDLE,

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Attorneys for the Petitioner on Review.

Received and filed February 17, 1950, U.S.C.A.

[Title of Court of Appeals and Cause.]

Docket No. 3041

STATEMENT OF POINTS

Comes now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceedings:

The Tax Court of the United States erred:

1. In ordering and deciding that there are deficiencies in income tax for the calendar years 1938, 1939, and 1941 in the respective amounts of \$96.65, \$1,583.92, and \$234.70; and that there is an overpayment in income tax for the calendar year 1940 in the amount of \$48.66.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner, as modified by the stipulation of the parties, on the basis that the stock dividends received by the Chandler Trust No. 2 were taxable to the life tenant trustors.

3. In holding that the Chandler Trust No. 2 was, for Federal income tax purposes, a valid trust under the laws of California.

4. In failing and refusing to hold and decide that

the Chandler Trust No. 2 was, by virtue of the rights of amendment or modification reserved by the trustors, not a valid trust for Federal income tax purposes and that, accordingly, the taxable stock dividends received by the trust during the taxable years were taxable to the life tenant trustors under Sections 22(a) and/or Sections 166 and 167 of the Revenue Act of 1938 and the Internal Revenue Code, rather than to the trust itself.

5. In holding that Sections 22(a), 166, and 167 of the Revenue Act of 1938 and the Internal Revenue Code are inapplicable.

6. In denying the Commissioner's motion to reconsider and set aside the Court's findings of fact and opinion.

7. In that its opinion and decision are contrary to the facts as stipulated by the parties.

8. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attor-
neys for Petitioner on Review.

Statement of service attached.

Received and filed May 4, 1950, U.S.C.A.

[Title of Tax Court and Cause.]

Docket Nos. 3033, 3036, 3037, 3038, 3039, 3040 and
3041.

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents 1 to 152, inclusive, constitute and are all of the original papers and proceedings on file in my office as the original and complete record in the above proceedings, and in which the respondents in The Tax Court proceedings have initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

[Seal] /s/ VICTOR S. MERSCH,
Clerk.

[Endorsed]: No. 12550. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. May Chandler Goodan, et al., Respondent. Commissioner of Internal Revenue, Petitioner, vs. Marian Otis Chandler, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Norman Chandler, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Philip Chandler, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Constance Chandler Crowe, Respondent, Commissioner of Internal Revenue, Petitioner; vs. Helen Chandler Garland, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Ruth C. Williamson, Respondent. Transcript of Record. Petitions to Review Decisions of the Tax Court of the United States.

Filed: May 19, 1950.

/s/ PAUL P. O'BRIEN,
Clerk.

In the United States Court of Appeals
for the Ninth Circuit

No. 12550

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

MAY CHANDLER GOODAN, MARIAN OTIS
CHANDLER, NORMAN CHANDLER,
PHILIP CHANDLER, CONSTANCE
CHANDLER CROWE, HELEN CHAN-
DLER GARLAND, and RUTH C. WILLIAM-
SON,

Respondents.

DESIGNATION FOR PRINTING

The following portions of the record are designated to be printed:

The petitions for redetermination in Tax Court Docket Nos. 3033 and 3036 to 3041.

The answers in Tax Court Docket Nos. 3033 and 3036 to 3041.

The opinion in Tax Court Docket Nos. 3033 and 3036 to 3041.

The decisions in Tax Court Docket Nos. 3033 and 3036 to 3041.

The motion to vacate decisions in Tax Court Docket Nos. 3033 and 3036 to 3041.

The order vacating decisions in Tax Court Docket Nos. 3033 and 3036 to 3041.

The order denying respondent's motion to reconsider and set aside in Tax Court Docket Nos. 3033 and 3036 to 3041.

The petitions for review and proofs of service in Tax Court Docket Nos. 3033 and 3036 to 3041.

The statement of points in Tax Court Docket Nos. 3033 and 3036 to 3041.

The stipulation of facts and exhibits 1A, 2B and 3C attached thereto in Tax Court Docket Nos. 3033 and 3036 to 3041.

/s/ THERON LAMAR CAUDLE,
Assistant Attorney General,
Counsel for Petitioner.

Dated May . ., 1950.

[Endorsed]: Filed May 29, 1950.

[Title of Court of Appeals and Cause.]

No. 12550

SUBSTITUTION OF ATTORNEYS

May Chandler Goodan, Respondent on Review herein, hereby substitutes Mackay, McGregor, Reynolds & Bennion as her attorneys in this proceeding in lieu of William Galbally, Jr.

Dated May 24, 1950.

/s/ MAY CHANDLER GOODAN.

I hereby consent to the foregoing substitution of attorneys.

Dated May 10th, 1950.

/s/ WILLIAM GALBALLY, JR.

We hereby accept the foregoing substitution of attorneys in lieu of William Galbally, Jr.

Dated May 31, 1950.

MACKAY, MCGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY.

[Endorsed]: Filed June 3, 1950.

[Title of Court of Appeals and Cause.]

No. 12550

STIPULATION AND ORDER

Re Exhibits

It is hereby agreed and stipulated by counsel in the above-entitled cases that the original exhibits may be excluded from the printed record but may be referred to by the parties in brief and argument as if part of that record.

/s/ THERON LAMAR CAUDLE,
Assistant Attorney General,
Counsel for Petitioner.

By /s/ A. CALDER MACKAY.

/s/ ADAM Y. BENNION,
Counsel for Respondents.

So ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ HOMER T. BONE,

/s/ WALTER L. POPE,
United States Circuit Judges.

Dated June 13, 1950.

[Endorsed] Filed June 27, 1950.